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DEPARTMENT OF DEFENSE
IN THE UNITED STATES

STANLEY - CHIEF STAFF





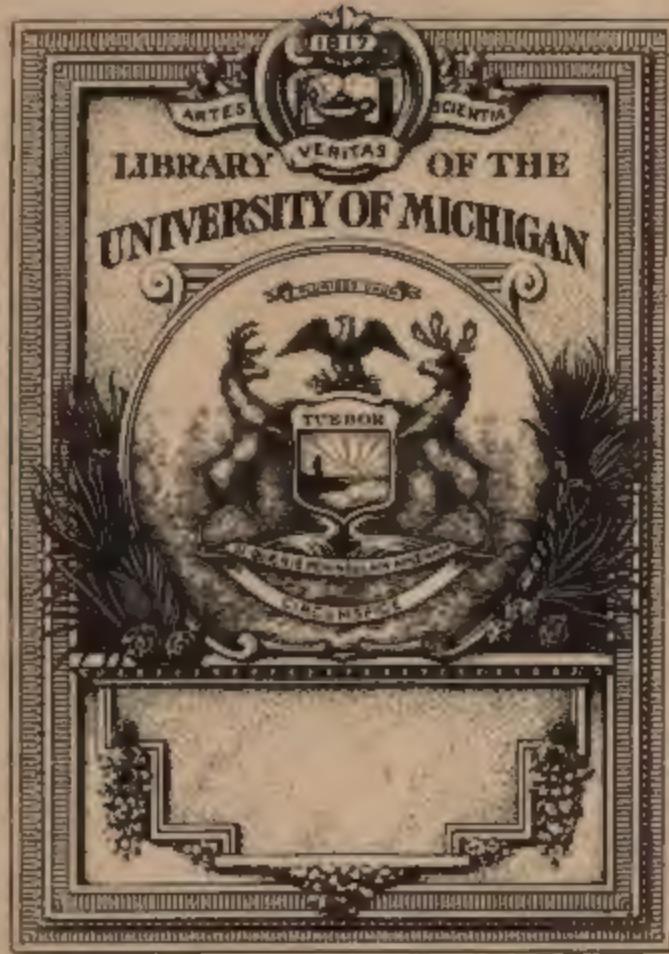
"Mais j'y suis, et, mes bons
camarades, par tous les dieux,
j'y reste!"

CHARLES K. JOHNSTON.



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274
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Charles N Johnson



Bequest of
C. K. Johnston



THE CAPITOL, WASHINGTON



GOVERNMENT AND POLITICS IN THE UNITED STATES

Problems in American Democracy

BY

WILLIAM BACKUS GUITTEAU, Ph.D.

Director of Schools, Toledo, Ohio

WITH ILLUSTRATIONS



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TO THE
BOYS AND GIRLS
OF THE
TOLEDO HIGH SCHOOLS

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BEQUEST OF
C. K. JOHNSTON
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PREFACE

Most teachers of Civics agree that the presentation of this subject should commence with local government, and then proceed to the study of the government of the State, and finally of the Nation. Not only is this the correct order historically, but by beginning with local government, the pupil first studies those governmental agencies with which he is most familiar. School district, township, and municipal governments are nearer to his daily life and experiences; and from this basis of civic facts he can proceed more readily to the study of State and federal government.

In presenting each of these fields of study, the same general plan of treatment has been followed: first, the origin of government has been briefly outlined, so that the relation of government to history may be understood; second, the structure or machinery of government has been described; and third, the functions or activities of government have been presented, special emphasis being laid upon this phase of the subject. This emphasis is in accordance with the legitimate demand that greater attention be given to the study of applied civics; and accordingly more than half of the chapters of the text are devoted to the work which governments perform.

In order to make the study of government concrete and vital, the largest possible use should be made of such material as town warrants, legislative bills, sample ballots, presidential messages, and the like. A detailed list of material for this purpose is given in Appendix "D." As a further aid to supplementary work, a suggestive list of questions and exercises has been placed at the end of each chapter, together with a chapter bibliography. These questions and exercises should be assigned to different members

PREFACE

of the class, in order that each pupil may learn to use the reference works cited, to distinguish between essential and relatively unimportant facts, and to prepare acceptable reports upon special topics.

A list of the works deemed indispensable for the school's reference library will be found in Appendix "E"; and if funds permit, many others should be included, chosen from the chapter bibliographies.

Members of the class should be encouraged to visit township, county, and municipal offices; and local officials should be invited to come before the class and describe the business of their departments. Added interest may be secured by organizing the class into a town meeting, or as a city council, State legislature, or branch of Congress. A bulletin board in the classroom for newspaper clippings pertaining to governmental affairs will prove both interesting and helpful.

The author of this text desires to express his sincere appreciation of the kindness of several friends in reading portions of the manuscript, and in aiding him with valuable suggestions and corrections. To Professor R. C. Brooks of the University of Cincinnati, he is indebted for reading the chapters on local government. Professor H. V. Ames of the University of Pennsylvania has examined the historical chapters, as well as those on the State and federal constitutions. Professor F. M. Taylor of the University of Michigan has read the chapters on finance. Professor J. W. Jenks of Cornell University has given many helpful suggestions concerning the discussion of the federal government. Professor G. W. Knight of the Ohio State University has done the same for the chapters on Relations of State and Federal Government, Political Parties, and Nominations and Elections. Professor Wilbur Siebert of the Ohio State University has read the chapters on the State Legislature, the State Executive, and the State's Economic Functions.

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Professor Carl Kelsey of the University of Pennsylvania has given valuable suggestions concerning the discussion of Crimes and Charities. The chapters on the State and Federal Judiciary have been revised and greatly improved by my friends C. F. Watts and Lloyd T. Williams of the Toledo Bar. The graphical charts were prepared by Mr. George Dunn, of the Toledo Central High School.

While the author is of course solely responsible for all errors and shortcomings in the work, he feels a deeper sense of obligation and gratitude to these friends than he can express by a formal acknowledgment in a preface.

WILLIAM BACKUS GUITTEAU.

TOLEDO, OHIO.
January 9, 1911.

NOTE TO THE EDITION OF 1918

In the new edition of this book, the same emphasis has been placed as in former editions upon the actual workings of government. Especial attention has been given to the more recent activities of the federal government, as manifested in the organization of the Federal Reserve System, the Farm Loan Banks, the United States Tariff Commission, the Federal Board for Vocational Education, and the numerous boards and commissions created to meet the imperative needs of military defense. In the present edition, most of the smaller type has been reset in type of standard size, to meet the wishes of many teachers by whom this text-book has been so kindly received.

TOLEDO, OHIO,
July 10, 1918.



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GOVERNMENT AND POLITICS IN THE UNITED STATES

CHAPTER I

GOVERNMENT AND THE CITIZEN

1. Origin of the State. Since the very beginning of civilization the tendency of man has been to unite with his kind in some form of association, rather than to live a ^{Kinship} _{theory} solitary and independent life.¹ One of the earliest of these groups is the patriarchal family, in which the father rules over his descendants as both king and priest. In other words, early social organization is based upon kinship; individuals related by blood unite in a family group for mutual protection and support. Gradually the family becomes larger and broadens into the clan or *gens* — a group of families claiming descent from a common ancestor, practicing the same religious rites, and ruled over by the chief kinsman. At length a number of clans unite into a tribe whose chieftain is still in theory the chief kinsman. Finally from the union of a number of tribes the ancient state appears, the members of which are united by the triple bond of a common language, a common religion, and real or assumed blood relationship. At the head of the state is the king, sanctified as priest and father of his people.²

¹ According to the celebrated dictum of Aristotle in his work on Politics: "Man is by nature a political animal."

² This patriarchal theory concerning the origin of political institutions was propounded by Sir Henry Maine, and is now accepted by many authorities. But since the actual origin of political institutions antedates history by thousands of years, this explanation must be viewed not as an account of how the state actually did originate, but of how it may reasonably be supposed to have originated.

2. Evolution of the State. The early state was little more than a group of migratory tribes which gained a precarious living by hunting, fishing, and herding their flocks. Gradually these early tribes became more civilized. They gave up their wandering mode of life as hunters and fishermen, settled upon a definite territory, and commenced to cultivate the soil. After much warfare and bloodshed, some strong chieftain would extend his authority over neighboring tribes, and become the acknowledged ruler of a large territory. In this way such countries as France and Great Britain had their origin.

3. Preliminary Definitions and Distinctions. The modern state is an independent, sovereign political community, organized under some form of government. **Independent**

State independence, sovereignty, organization — these are the essential elements in the conception of the state. Hence a community politically dependent upon another, as Egypt or the Philippines, is not a state. By sovereignty, the second element in the definition of the state, is meant supreme and universal power over all individuals within its borders.¹ In most modern states the ultimate sovereignty is vested in the people themselves. Lastly the state possesses an organization known as its government, which will be presently defined.

Nation The word nation (from the Latin *nascor*, to be born) has reference primarily to the relations of birth and race kinship. As commonly used, the word nation denotes a body of people living within a definite territory under an independent government of their own; thus the French nation denotes the people occupying the territory known as France.

Government, a term often used as synonymous with state, should be clearly distinguished from it, since govern-

¹ This definition excludes the individual commonwealths comprising our federal Union, since these are not sovereign states. Throughout this volume the word "State" capitalized, will be used to denote one of the members of the Union, and printed without a capital to denote a sovereign state belonging to the family of nations — as the United States or France.

ment is merely the instrument or agency created to carry out the ends of the state. Government includes ^{Government} the body of laws and customs through which the will of the state is expressed, as well as the officers whose duty it is to formulate, execute, and interpret those laws and customs.

A government is administered in accordance with a constitution — which may be defined as the fundamental, organic law in which the will of the state is expressed, and by which the form and powers of ^{Constitution} its government are determined. Constitutions are usually written,¹ as in the case of the United States, France, and Italy; sometimes unwritten like that of Great Britain. Unwritten constitutions exist in the form of precedents, customs, and rules defining the nature of the government and the scope of its authority.

4. Who is to control the Government? As we have learned from our study of history, early government was something imposed from above. The strongest warrior became the ruler, and this authority became hereditary in his family, so that on the death of the ruler or king, his power descended to his eldest son. The real governing authority was held by this single individual, the people as a whole having very little to say about the matter. As late as the seventeenth century, the French king, Louis XIV, is reported to have said: "The State? I am the State!" In other words, Louis XIV considered himself the government, and would not admit that the business of government concerned the people at all. In Great Britain the Stuart kings even claimed that they ruled by divine right — that God himself had ordained them rulers of the people.

Now in early times it was necessary that order and law should be established in the person of a single individual, for

¹ The first written constitution creating a government was the Fundamental Orders of Connecticut, drafted by the people of Windsor, Hartford, and Wethersfield, in 1639.

even tyrannical government is better than no government
~~Control by~~ at all. But after society had become accustomed
~~the people~~ to order and obedience, men were unwilling to submit to the absolute control of a single individual, and wished to have a voice in their government. So a great part of the world's history is made up of this struggle on the part of the people to secure in their own hands the control of government; while throughout the ages, kings and princes have striven to retain for themselves the ruling power. At the present time, even in most European monarchies, the actual power of government has been transferred from the king to the people themselves. Hence such countries as Great Britain and Italy are called constitutional or limited monarchies, because the power of the rulers is limited by a constitution in which the will of the people is expressed.

5. Early Government in the United States. In our own country, the control of government from the earliest times ~~New Eng-~~ ~~land towns~~ has been in the hands of the people. The sturdy pioneers who came to the new world in the seventeenth century were seeking a land where they might have greater freedom — freedom to worship according to their own conscience, freedom to manage the business of government as best suited their own needs. The colonists who came to the New England coast settled in small, compact communities known as towns, each having its own church, and its blockhouse for defense against the Indians. The residents of each town met together in town-meeting to pass rules for their government and to elect local officers. Since the residents of each town decided all important matters by their votes in town-meeting, the government was a pure democracy; that is, it was a government carried on by the people themselves. This type of government is adapted only to small, compactly settled communities, in which the voters can readily assemble to decide matters of common concern.

At the South, the early colonists did not settle in small

communities as in New England, but scattered over a wide area. As the houses of the planters were miles apart, it was impossible for them to manage their local affairs in town-meeting, as did the New England settlers. So these Southern colonists established county government for the management of their local affairs. The powers of government were not exercised directly by the voters, but were entrusted to eight men, who composed the county court. The counties were much larger than the New England towns, but performed similar work. They looked after local matters, such as education, the construction of roads, the care of the poor, and the levy and collection of taxes.

Both the towns of New England and the counties at the South were under the control of colonial governments. Each of these thirteen colonial governments had its legislature and its governor, in charge of matters of especial interest to that colony. All the thirteen colonies were subject to the authority of Great Britain. So the American colonist lived under three governments: first, his local government, that of his town or county; second, his colonial government; and third, the government of Great Britain.

6. Our Three Sets of Governments. As a result of this historical development, the people of the United States to-day, like the early colonists, live under three governments. First, a national government, which carries on affairs which concern the nation as a whole — foreign relations, the mail, control of territories, public lands, money, and commerce. Second, the State governments, which control such matters as education, contracts, the holding and transfer of property, regulation of business, and the punishment of crime. Third, the local governments (counties, townships, villages, and cities), which are under the direct control of the State governments. These local governments have charge of affairs which di-

County government at the South

Colonial governments

National, State, and local governments

rectly concern the people of each local community, as the building of roads and bridges, the care of the poor, maintenance of schools, provision for water-supply, street paving and lighting.

7. The National Government. You have learned in your study of history that the constitution of the United States ~~National~~ was framed in 1787 by a convention which ~~in-constitution~~ cluded many of America's greatest leaders, and was afterwards ratified by conventions held in each of the thirteen States. Accordingly this constitution is the foundation on which our national government rests; and, with the seventeen amendments which have since been added, forms the supreme law of the land.

Our constitution provides for a national government consisting of three departments, legislative, executive, and ~~Three de- parts of govern- ment~~ judicial. Legislative powers are exercised by Congress, which consists of two houses. The smaller house, or Senate, is composed of ninety-six members, two being chosen by the voters of each State. In the larger body, the House of Representatives, each State is represented in proportion to its population. Executive authority is vested in a President, who is chosen by indirect election for a term of four years. The President appoints an advisory body of ten members, known as the Cabinet. The judicial department consists of the Supreme Court of nine members, which sits at Washington, together with lower courts which try cases arising in different parts of the Union.

8. The State Governments. In many respects the State governments (now forty-eight in number) resemble the ~~Three de- parts of govern- ment~~ national government. Each State has its own constitution, which establishes the three departments of government, — legislative, executive, and judicial.

The legislature, or law-making body, consists of ~~two~~ ~~Legislature~~ houses, and meets at the State capital. Its members are elected by the voters from districts into which the State is divided.

The chief executive officer of the State is the governor, whose position is similar to that of the President. The governor is assisted in his work of executing the laws by numerous officials, some of whom he appoints, while many others are elected by the voters.

State courts of several grades are provided for the trial of cases arising under State laws; so that if a man steals the property of another, or if one refuses to carry out an agreement or contract which he has made, justice may be obtained by the injured party through the aid of the courts.

9. Local Governments. Nearer to the citizen than the government of his State, or the still more remote government at Washington, is the local government which supplies so many of our public needs. When you pass along a macadamized road or a paved street on your way to school, you are using a public convenience provided by your local government. If you ask yourselves the questions, Who protects this community from fire and theft? Who builds its roads and bridges? Who constructs and maintains its public schools and libraries? Who provides its parks, boulevards, and water-supply? — the answer in every case is, that these public necessities are supplied by your local government. If you live in a city or village, the local government of greatest importance to you is the city or village government. In rural communities, especially in New England and the central States, much of the work of local government is performed by the town or township. All of us, whether residing in cities, villages, or in the country, live under county governments, which carry on such important functions as the recording of deeds and mortgages, the local administration of justice, and the collection of taxes.

Since local governments supply the needs which concern us so greatly in our everyday life, it is of vital importance that the local officials whom we elect shall be honest and

capable. Otherwise we may have poor schools, neglected streets, an inadequate or impure water-supply; or worse still, dishonest officials may accept bribes and sacrifice the interests of the community in a thousand ways. The cost of this dishonesty and inefficiency is always paid by the taxpayers. Through the heedlessness of the voters of New York City, a group of dishonest men, known as "The Tweed Ring," gained complete control of the city government during the years 1865 to 1871. As a result of their corrupt management, the debt of the city was increased by \$81,000,000, for which the city received little return. The county building remains as a permanent monument of their dishonesty, still incomplete after having cost the taxpayers over thirteen million dollars.

10. Government's Protection of the Public. Let us now consider what public services government performs for the **citizen.** So numerous are these services that it is only possible to mention the most important ones. We have seen that the first essential function of government is the maintenance of order, and the protection of life and property. A man's life must be safe, and what he earns by his labor must be his to enjoy; this protection is, therefore, the primary function of government. When you see the policeman on the corner, you know that he represents a part of the protection which government extends to every citizen. You know that he will use every effort to prevent crime and to arrest wrongdoers; in short, to protect the rights of yourself and other law-abiding persons.

So with the courts, which represent another agency provided by society for the protection of the public. Here **those who have violated the laws of the State are tried,** and punishments imposed. Before these tribunals a man who has been injured or cheated by another may seek redress. I have the right freely to use and enjoy my own property, but it is also my duty to respect the property rights of my neighbor. If I go upon his premises

without permission, pick flowers from his yard, injure or deface his buildings, he may have me arrested, and that arm of government called the courts will punish me for the offense.

But, you may ask, suppose a large number of persons are guilty of lawless conduct? Suppose a riot breaks out in which hundreds of men take part, so that the police are powerless? Back of the local police force is the State militia, which can be called out by the governor to aid in enforcing the law; and back of the State militia is the entire army and navy of the United States, all of which, if necessary, will be used to maintain peace and order in every part of the Union. So we see that government has a strong arm when it comes to protecting the peace of the community, and the rights of the citizen. Moreover, this protection follows the citizen wherever he goes, whether he travels on the high seas or in foreign lands. It was primarily to protect the rights of our citizens on the ocean highways of the world that the United States entered the World War in 1917. As during the War of 1812, our country defended the principle that the deck of an American ship is the same as American soil, and that the flag that floats over the ship protects the lives of the men beneath it.

Other protective agencies

11. Education, Public Health, and Charities. Have you ever considered what an immense service government performs in providing free public education for every boy and girl in the land? You belong to a vast army of twenty-three million pupils, for whose education government expends each year more than \$900,000,000. In addition to nearly 800,000 schoolhouses, government maintains numerous public libraries as an aid to its educational work.

When an epidemic of typhoid fever breaks out, one of the first questions asked is, "What about the community's water-supply? Is it pure and free from contamination?" This suggests another service which government performs, for in three fourths of our cities, the

water-supply

water-works system is owned by the public. Sometimes epidemics are caused by impure milk or other food; so government employs inspectors of milk, meat, and other foods, in order to safeguard the health of the citizens. For the same reason, government builds sewers, and provides public parks and playgrounds, thus creating sanitary and healthful conditions for the entire community.

The paving of streets is another work carried on by government; while street lighting is provided either by government, or by some company to which government has granted the privilege or franchise.

Government also carries on the important work of public charities. Hospitals, asylums for the insane, the deaf, and the blind, are maintained at public expense. In its almshouses and poor-farms, government takes care of those unfortunates who are unable to support themselves.

All of these services are performed either by local or State governments. Thus we see how important is the work of these governments, and how necessary it is that honest and efficient officials be chosen to direct this work.

12. Work of the National Government. When you send a letter through the mails, you are making use of one of the most important services of the national government.

The mail, money, and banks When you pay for something at the store, you make use of money, the circulating medium provided by the national government, without which it would be impossible to carry on the business of the country. Business is also greatly aided by means of our national banks and by our federal reserve and farm loan banks; while the post-office department has a system of postal savings banks, intended primarily for depositors of limited means.

When you travel on a ship, your journey is rendered more safe by means of the lighthouses which our federal government maintains to guide your ship safely to harbor. If you live upon a navigable river, you have

probably seen dredges at work broadening and deepening the channel. This improvement of rivers and harbors is one of the most important services whereby the federal government aids commerce. The Panama Canal is the greatest work of this kind ever undertaken by any government.

When the telephone was invented, the inventors applied to the national government for a patent, in order to secure for themselves the exclusive right to make and sell their invention. So, too, when a man writes a book, he applies to the national government for a copyright, giving him the sole right to publish and sell it. Thus government aids inventors and authors by securing to them the fruits of their labor.

In your study of geography, you learned that in the West and Southwest there are thousands of acres of land which cannot be cultivated because of the scant water-supply. By building immense dams and reservoirs, the national government has provided irrigation systems which are transforming these desert regions into fertile farms.

Perhaps you have read of the forest rangers, men employed by the government to guard against forest fires and timber thieves. This protection of our forests is a part of the all-important work which government performs in the conservation of our natural resources.

13. The Duty of Paying Taxes. Such are the more important of the almost numberless services which government performs for the citizen. Let us now consider what the citizen, in turn, owes to his government; for the right to claim all these services must imply corresponding duties. First, it is the duty of all those who live under any government to aid in providing the finances by which government carries on its work; in other words, to pay taxes. The services which government performs cost immense sums of money; and this money must come from

the pockets of the citizens. It is the duty of every person to contribute this financial support according to his means. The man who seeks to evade his fair share of taxes is trying to cheat the entire community. If a number of you should club together to buy a basket-ball, and a boy who could afford to pay should refuse to contribute his share, you would say at once that he ought not to use the ball. In the same situation is the man who evades his just share of the expenses of government. He deserves neither the protection of government, nor the use of the many public conveniences which government provides.

14. The Duty of Military Support. Not only by giving a portion of his property does the citizen support his government; if necessary, he must take up arms in its service may be compulsory. You have learned that during the Civil War, it became necessary for a million men to leave their homes and fight for the flag of the Union. Most of these men entered the army as volunteers; but so long and doubtful was the struggle, that government was obliged to draft many men who did not volunteer to serve. Later, when the United States took up arms in 1917 to defend our national rights against the aggressions of Germany, Congress promptly passed a conscription act. As afterwards amended, this included all men between the ages of eighteen and forty-five years. So we realize that in time of peril, government may claim the services of every able-bodied man. Every citizen, then, must be prepared to offer even his life in the defense of his government. It is not from men alone that government receives military support. The history of the Civil War and of the World War of 1917 records the devoted services and sacrifices of the women of our country. So women, as well as men, support their government in time of war.

15. The Duty of Voting. It is to be hoped that few of you will be called upon to take up arms in support of your government; for to-day men realize more than ever

before the horror and the wickedness of war. But there is another all-important duty which every voter should perform. He should cast his vote at elections for candidates who will render honest and efficient public service. Your ballot is just as vital to government's support in time of peace as your bayonet in time of war. Remember that when public money is wasted, it is your money that is wasted. If public officials are incompetent, you help pay the bills. You should not be influenced by the example of the lazy or indifferent persons who stay away from the polls on election day. You may hear these individuals say that "it's all no use, the politicians will run things anyway." Older men sometimes grow weary and pessimistic; it is for you, the youth of the land, whose hearts are inspired with the golden ideals and hopes of youth, to enter on the path of progress, and fight the hard fight for good government. Only in this way can our popular government succeed; and this duty to vote and work for the election of good public officials is the greatest service which you can render your country.

Importance
of the
ballot

16. Other Important Duties. Another duty which the citizen may be called upon to perform is that of jury service. This is not a pleasant duty, for one may be kept away from his business for several days, or even weeks, if the trial is a long one. But jury trial is an important safeguard of free government; and every citizen should be willing to serve if called, even at a personal sacrifice.

Finally, citizens may owe it to the community to accept public office, even when they prefer not to serve. Individuals of high talent and ability are often unwilling to give up the time necessary for public office; but it is just this class of citizens that the public service needs. There are always numerous persons who desire public office for what they can get out of it; but it is not alone from those who seek office that officials should be chosen. Gradually we are coming to realize that the office should seek the man, not the

Jury
service

Office-
holding

man the office. Hence if a considerable number of voters desire a certain man or woman to accept office, the nomination should not be declined. Every citizen owes the community a certain amount of public service, even at a personal sacrifice.

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QUESTIONS AND EXERCISES

1. Explain why government is necessary. Why is the study of government important to every citizen?
2. What are some of the obligations of the individual toward government? Of government toward individuals?
3. What is a constitution? Who adopts it, and what is it for?
4. What are the respective merits and defects of written and of unwritten constitutions?
5. What are the three departments of government, and what does each do?
6. What are the advantages of distributing governmental powers among three separate departments?
7. What work, in general, is performed by the national government? By the State and local governments? Make a list of the services performed by each of these governments.
8. Tell how government protects the people.
9. How does government protect the public health?
10. Who looks after street paving in your community? Street lighting?
11. How are the forests protected? Why is this protection necessary?
12. Name several nations which have established separate national governments in modern times. (*Cambridge Modern History*, XI; Burgess, John W., *Political Science and Comparative Constitutional Law*, I, pp. 37-39.)
13. Prepare a report upon the origin of representative government in the United States. (Kaye, P. L., *Readings*, pp. 21-25.)

CHAPTER II

ORIGIN OF RURAL LOCAL GOVERNMENT

17. Relation of Local to State Governments. In a country whose government is centralized, the national authority determines the form and attributes of the local governments; and hence in such states as Great Britain, France, and Italy, the system of local government is in large measure uniform in all parts of the country. On the contrary, under a federal government such as exists in the United States, regulation of local government is left to the individual States, each of which decides for itself what local areas and authorities shall exist within its borders.¹ Hence diversity instead of uniformity characterizes local government in this country, the systems established by the various commonwealths agreeing on some points, but differing on many others.

In every commonwealth local government is administered through certain local agencies created by the State legislature, by which body they may be regulated, modified, or even entirely destroyed.² These local divisions have a dual character: they are (1) agencies of the State government, which entrusts them with the local administration of certain public or governmental functions; and (2) they are also organs designed to satisfy local needs and to regulate the internal affairs of particular districts.

¹ In other words, "the American system is one of complete decentralization, the primary and vital idea of which is, that local affairs shall be managed by local authorities, and general affairs only by the central authority." — Cooley, Thomas M., *Constitutional Limitations*, p. 981.

² But nearly all State constitutions contain important limitations upon the legislature's power over local areas, as well as provisions designed to guarantee to the localities important rights of local self-government.

18. Classification of Local Governments. Local governments may be classified into two groups: (1) rural governments, including the township and county (^{Rural and urban} together with their various subdivisions — school districts, election and road districts); and (2) urban governments, including villages and cities.

Of rural local governments there are three leading types in the United States: (1) the town or township type in the ^{Types of rural government} six New England States; (2) the county or county-precinct type in the South, Southwest, and in the Far West; (3) the mixed or compromise type in the Middle, Central, and Northwestern States. These three types are a survival or reproduction of the three forms of local government which prevailed in colonial America; and the variety of types springs from differences in the character and economic environment of the early settlers.

19. Origin of Town Government. Town government is New England's contribution to American local government. ^{The German mark} But this form of government is much older than New England, older even than the English nation itself, for it was brought from northern Germany by those Teutonic tribes from the union of which the English people has sprung.

The old English town, like its prototype the German mark, was surrounded by a hedge or fence (tun), and was originally inhabited by men united by the ties of common speech and religion, and real or assumed kinship. "Harling abode by Harling, and Billing by Billing; and each 'wick' or 'ham' or 'stead' or 'tun' took its name from the kinsmen who dwelt together in it. In this way the home or 'ham' of the Billings was Billing-ham, and the 'tun' or township of the Harlings was Harrington."¹ Thus the early town was the home of a clan which had given up a wandering mode of life and settled upon a definite tract of land.

¹ Green, John Richard, *History of the English People*, book 1, ch. 1.

Common ownership and cultivation of the land was the striking feature of the town's economic life. Each family had its dwelling with a plat of ground, and ownership of this plat carried with it the right to cultivate a certain portion of the communal land, as well as the right of pasture in the undivided land or waste. Economic features

The government of this community was thoroughly democratic. In the tun-moot or town-meeting, all the free-men assembled to enact by-laws,¹ adjust disputes, Government and try petty offenses. Here also the chief officers of the town, the *grefea* or head-man, the *bydel* or messenger, and the *tithingman* were elected; and the orders of the higher authorities relative to such matters as taxation and the pursuit of criminals were carried out. Further, the town was the unit of representation for the larger areas of government. Certain villagers were sent to represent it in the assemblies of the hundred and the shire,² thus laying the foundation for the system of representative government that has become characteristic of English institutions.

During the Norman period the town was known as the manor, and was dependent upon some feudal lord. At a later period the manor was called the "parish." Influence upon New England institutions Originally the parish was an ecclesiastical division for the collection of tithes; but its boundaries ordinarily coincided with those of the town or manor, and from 1580 to 1640, "town" and "parish" were used in England as convertible terms. It was with the parish system of English local government that the New England colonists were familiar; but they preferred to call their new communities by the older term "town," using the word "parish" to denote an ecclesiastical area. Different conditions in the new world brought about many modifications, but on the whole the development of American local gov-

¹ That is, town-laws: from the Danish *by*, town.

² The hundred was a local division which included a number of townships. The shire (state called the county) was a still larger local area containing a number of hundreds.

ernment is a continuous process from English institutions of the seventeenth century.

20. **Origin of the County.** The county, like the town, is an English institution transplanted to American soil. The English county or shire dates from the Anglo-Saxon invasion of Britain (A.D. 449-600), and in many cases denotes the territory seized by one of the invading tribes. Thus Essex, Middlesex, and Sussex are the districts originally occupied by the West Saxons, Middle Saxons, and South Saxons; and Norfolk and Suffolk mark the lands held by the "North folk" and "South folk," two tribes of the Angles. In the course of time several shires combined to form kingdoms, as Northumbria, Mercia, and Wessex; and finally the ruler of Wessex became king of all England. The various shires then became subordinate parts of the new kingdom, although retaining important powers of local government. In later times new shires were created as convenient administrative districts. Each shire included a number of hundreds and many townships.

The principal officers of the shire were two, the *ealdorman* and the *shire-reeve* or sheriff. Each shire had its general assembly, the shire-moot, which met regularly twice a year. Its sessions were attended by representatives of the townships, and by the great landowners and public officers. The shire-moot was a court for the trial of important cases; and it was also the agency whereby, through the sheriff, the jurisdiction of the national government was enforced. Thus the shire, like its successor the county, was both a self-governing local organism and an administrative agent of the central authority.

21. **Establishment of Towns in New England.** For a number of reasons, the New England colonists settled in small communities known as towns, instead of scattering over larger areas. (1) The first New England colonists were Puritans in religion, and the early settlements were made by church congregations,

each headed by its minister. Such a group of people would naturally wish to have their houses near together so that all might worship at the common church. (2) The economic conditions also favored the development of towns. The New England coast is indented by many bays and harbors: the rivers are generally rapid and unfit for navigation: the sterile soil is not adapted to the cultivation of large estates. Hence many of the people settled on small farms, raising little more produce than they themselves needed; while others engaged in commerce and fisheries, which likewise tended to close settlement. (3) Then, too, the Indian tribes were hostile, and it was easier to defend a compact community against sudden attack than a widely scattered population. (4) Finally, the influence of custom and tradition must not be overlooked. Many of the settlers were themselves townsfolk; they were influenced by the Teutonic traditions of local government later modified by English practice; and hence on meeting in this country the primitive conditions that existed in the early Teutonic environment, they established local communities remarkably like the ancient German mark.

22. Characteristics of Early New England Towns. The New England town was usually located near the seacoast or on the banks of a river, and was surrounded Economic features by a stockade which served as a defense against the Indians. The term "town" was applied not only to the group of dwellings within the stockade, but included also the outlying rural area which was gradually brought under cultivation as the Indians were pressed back. As in the German mark, ownership of a "house-lot" carried with it the right to cultivate certain outlying fields, and to pasture cattle in the undivided land. Each town had its church, and its blockhouse for defense against the Indians.

The government was a pure democracy, the residents coming together in town-meeting for the regulation of local affairs and election of officials. The Town government

governmental functions of the town included maintenance of highways, care of the poor, support of public schools, assessment and collection of taxes, organization of a local militia, election of a representative to the colonial assembly, and even the regulation in minute detail of the private conduct and affairs of the inhabitants.

Such a community was in fact a miniature commonwealth exercising sovereignty over the persons and property within its limits. As the colonial governments were established, they claimed and exercised authority over the towns, but the latter retained an almost complete control over local affairs. Counties were created chiefly as convenient judicial districts; and although they afterwards acquired other functions, New England counties have always occupied a distinctly subordinate position in local government as compared with the towns.

23. Rise of the Southern County. Economic and social conditions in the Southern colonies were in marked contrast with those existing in New England, and hence institutional development was naturally along different lines. (1) The Southern colonists were not Puritans, but Episcopalians: they did not come to America in groups of families from the same neighborhood, but as a multitude of individuals from various classes of society. (2) The Indian tribes at the South were comparatively peaceable, so that it was not necessary for the settlements to be close together for mutual defense. (3) Finally, the economic conditions were such as to favor the scattering of population over a wide area. The soil was very fertile, the rivers slow and navigable, forming harbors far in the interior where English ships could exchange their cargoes of manufactured goods for American tobacco. The warm climate was favorable to African labor; and the system of slavery once introduced spread rapidly. Large plantations were the rule, and a modified form of feudalism was created, authority being vested in the great landowners. The natural

result of slavery was to degrade manual labor, thereby preventing the rise of a prosperous middle class; and an insurmountable social distinction separated the plantation owners from the landless settlers. Thus an aristocratic type of society was developed at the South as naturally as a democratic type in New England.

24. **Government of the Southern County.** As the houses of the planters were miles apart, it was necessary that the local governmental divisions should include a considerable area; and hence county governments modeled after the English county were created.

County
court and
officials

General administration of local affairs was entrusted to a county court, commonly composed of eight justices. Besides exercising judicial powers, these officials supervised the local affairs of the county. Other officers were the sheriff, coroner, and county lieutenant, entrusted with duties similar to those of the corresponding county officers in England. Nominally the governor appointed the justices and other principal officers; but in practice the justices themselves nominated candidates, who were then commissioned by the governor. Thus the county court became a close corporation or self-perpetuating body composed of the leading gentry of the county.

25. **The Southern Parish.** The English parish was reproduced in the Southern colonies under the same name, but being overshadowed by the county, its functions were of slight importance. To the parish vestry ^{Subordinate position} was entrusted the assessment of local rates, appointment of church-wardens, and care of the poor. The vestrymen were at first elected by the people of the parish; but later they obtained the power to fill vacancies in their number, and like the county courts became self-perpetuating bodies. Ultimately the parishes became purely ecclesiastical divisions, the counties remaining the all-important units of local administration.

26. **Contrast between New England and Southern Sys-**

tems. Thus in several respects, the local government of the Southern colonies presents a striking contrast to that of New England. First, it was less democratic. In New England the people in town-meeting managed local affairs and chose their local officials; while at the South the governing authority was vested in the leading planters of each county, who through the governor dictated the appointment of county officers. Second, the Southern county was the unit for local administration as well as for representation in the colonial assemblies; while in New England the town was the unit for both purposes. But the Southern counties were not such important organs of local government as the towns. The New England State has been called a combination of towns; but the Southern State was a political whole whose local divisions possessed little independent life, having been created chiefly for convenience in judicial and financial administration.

27. Township-County System of the Middle Colonies. In the Middle Colonies¹ economic conditions were favorable to either the town or the county system of local government. This region has a rich soil and also fine seaports which invited to commerce. Hence flourishing towns arose with interests quite different from those of the surrounding rural population. Gradually there developed a mixed or compromise type of local government known as the township-county system, which aims at a partition of powers between the town and the county. Thus in political organization, as in geographical position, the Middle Colonies were midway between the town system of New England and the county system of the South. Local government in the Middle Colonies is especially important because of the profound influence which its township-county system was destined to exert upon the local institutions of the Central and Northwestern States.

¹ New York, New Jersey, Pennsylvania, Delaware, and Maryland.

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QUESTIONS AND EXERCISES

1. Summarize the advantages and disadvantages of a decentralized system of local government. (Section 17)
2. Illustrate the dual character of local governments. (a) by giving examples of public or governmental services which they perform; (b) by citing examples of local affairs entrusted to their control.
3. Which of the three systems of local government named in Section 18 prevails in your State?
4. Draw an outline map of your State, and mark with different colors the boundaries of the county in which you live, and also the boundaries of the townships (or towns) within your county.
5. Write a brief history of the county in which you live.
6. Give the area and population of your county.
7. How many counties are there in your State? Name the five counties having the largest population at the latest census. Name the five counties having the largest area.
8. What is the county seat of your county? Is it centrally located? Is it the largest city in the county?
9. Visit your courthouse and other county buildings, note the uses to which they are put, and prepare a class report upon any facts thus learned.
10. Show the antiquity of some features of town government in New England.
11. Look up the meaning of *ham*, *wick*, and *stead*. Think of towns whose names contain these words, also of towns whose names contain the word *ton* or *tun*.
12. Write a brief history of the town (or township) in which you live.
13. What is the area of your town or township? Its population?

CHAPTER III

STRUCTURE AND FUNCTIONS OF RURAL LOCAL GOVERNMENT

28. General Features of New England Towns. In examining the present structure of rural local governments, we shall commence with the New England town, which is the all-important local unit in the six New England States. The town, it must be remembered, is a rural, not an urban community.¹ New England towns are generally irregular in form, with an area of from twenty to forty square miles. The population averages under 3000. The town is sometimes an agricultural, sometimes a manufacturing community; and not infrequently both industries are carried on, this diversity in industrial life often causing discord in town politics. Communal property rights — the striking feature of the early town's economic life — have been abandoned as unsuited to modern economic conditions; but the chief political characteristic of the ancient town — local self-government through a popular assembly — has been retained.

29. Important Elements in Town Government. The two most important elements in town government are the town-
The town-meeting meeting and the board of selectmen. The town-meeting is an assembly of the qualified voters held regularly once a year, usually in the spring.² Special meetings are called from time to time as occasion demands. The meeting is summoned by a warrant notifying the voters to meet at a certain time and place to transact the business specified in the warrant. Meetings are held in the town hall

¹ But many towns are at least semi-urban, and others which may be classed as urban (with a population exceeding 3000) have retained their early form of town government instead of incorporating as villages or cities.

² Except in Connecticut, where the annual meeting generally comes in October.

if there is one, otherwise in some church or schoolhouse. A moderator presides, and the town clerk acts as secretary.

The most important functions possessed by this body are (1) that of local legislation, and (2) of electing the town officials. As a legislative body the town-meeting ^{Functions} has power to enact by-laws regulating local affairs, including local finance, schools, poor relief, highways, public works and institutions, police, and sanitation. At each annual meeting, the town officers report in detail as to their administration of the town's affairs, and submit estimates of the funds needed for the ensuing year. The town-meeting then discusses the report,¹ determines town policies for the following year, votes taxes for local purposes, and elects the town officers.²

Of the town officers, the most important are the selectmen,³ an executive board of from three to nine members, generally chosen for a term of one year. This ^{Town} ^{officers} board is charged with the general supervision of town affairs under authority conferred by statute or by the town-meeting. Other officers are the clerk, who keeps the town records, issues marriage licenses, and registers vital statistics; the treasurer, collector of taxes, assessors, constables, school committee, highway officers, overseers of the poor, library and cemetery trustees, and many others.

In addition to their local duties, town officers act as agents of the State government for the assessment and collection of State taxes, enforcement of election and health laws, and other important services.

30. **The New England County.** In its origin the New England county was an aggregation of towns for judicial purposes; and although it has since acquired other functions, it is still primarily a judicial district in which civil and criminal courts are held, some by county, others by State

¹ The most characteristic feature of the town-meeting is the lively and interesting debate, which affords a valuable political training.

² Formerly representatives to the State legislature were chosen in town-meeting, but now they are generally chosen from districts at the regular State election.

³ In Rhode Island known as the town council.

judges.¹ Of late years the county has gained ground as an administrative unit, although still occupying a subordinate position in local government.

In each county the people elect a sheriff, who is the principal executive officer attached to the court; also a **County officers** prosecuting attorney, clerk, treasurer, and a board of county commissioners, generally consisting of three members elected at large.² The commissioners have charge of the county buildings (such as courthouses, jails, and in some States, poorhouses). They estimate the amount of taxes needed to defray county expenses, and apportion this amount among the various towns and cities by which it is levied.³ Only in this last respect does the county exercise control over the towns.

31. The Southern County. The Southern county was originally established as a judicial division in which courts were held, and as a financial district for the collection of State taxes. Other functions have been gradually acquired until to-day the Southern county has general charge of most local affairs, including schools, the maintenance of jails and poorhouses, and the construction and repair of bridges and highways.

County officers General administrative authority over county affairs is vested either in a county court or in a small board of commissioners, members of which are chosen by the voters. Other county officers are the assessor, collector, auditor, treasurer, superintendent of education, overseers of roads, superintendent of the poor, clerk, recorder, surrogate; also county judges, a sheriff, coroner, and prosecuting attorney (the last-named officer sometimes acting for a judicial district including several counties). All of these officers are elected by popular vote, for terms varying from one to four years.

¹ In Rhode Island there are no county officers other than judicial.

² In Connecticut the commissioners are chosen by the State legislature.

³ In New Hampshire and Connecticut the commissioners do not exercise the power of taxation or of making appropriations.

32. Minor Local Divisions in the South. Practically all the functions of local government are monopolized by the Southern county.¹ The smaller local divisions have very limited powers, and their officers are generally controlled by county authorities. Townships were established in Virginia, West Virginia, North Carolina, and Alabama by the reconstruction legislation following the Civil War; but they were soon afterwards entirely abolished, or reduced to precincts for the election of constables and justices of the peace. School districts exist in all of the Southern States, but possess slight powers of local taxation or administration.

33. Township-County System of Local Government. The westward movement of population in this country has been generally along parallels of latitude. Thus ~~Westward migration~~ the Southwest has been peopled largely by settlers from the Southern States, who carried with them the county system of local government; while men from New England and the Middle States emigrated to the Middle West and Northwest, and established there the township-county system of local government, also called the mixed or compromise system because it is a compromise between the local institutions of New England and those of the Middle States.

Under this plan the functions of local government are divided between county and township, both units coöperating in the work of administration. The county is relatively less important than at the South, the township less important than in New England. This form of local government prevails throughout the great group of States extending from New York to Nebraska, which together contain more than half the entire population of the country. The township-county system is therefore the most representative type of local government in the United States.

34. Origin of the Township in the West. Township gov-

¹ In Louisiana the division corresponding to the county is called a parish.

Compromise
plan of local
government

ernment in the Middle West dates from the Ordinance of Land ordi- 1785, providing for the survey and sale of the Lands ceded to the federal government by the nance of 1785 several States and by certain Indian tribes. In accordance with the plan of survey adopted, the public domain was divided into tracts six miles square, which were designated by the New England name of townships. For purposes of record and sale, each township was divided into thirty-six sections, each containing one square mile or 640 acres, the sections being subdivided into tracts of 160, 80, and 40 acres.

Judged by its economic results, the Ordinance of 1785 is one of the most important administrative measures ever Economic results adopted. Its simple and accurate method of survey was of the greatest convenience to settlers and facilitated the rapid peopling of the new territory. The western pioneer could readily and accurately locate his claim or homestead without requiring the services of a surveyor. Furthermore the land was sold at a nominal price to settlers who perfected their titles by residing on and cultivating their homesteads.

35. Development of the Congressional Township. The germ of future civil organization was the requirement that Land for public schools in every township one section of land should be set aside for the support of public schools. This was the sixteenth section, near the center of the township; and by a later act (1848), the thirty-sixth section in the southeast corner was also reserved. All revenue derived from this land by sale or otherwise was to constitute an inalienable fund for school purposes.

When a new State was formed out of this western territory, the county plan of local government was first adopted, since that form is cheaper and better suited to a scattered population. But since in each township land had been reserved for the public schools, it naturally followed that the township was made a body corporate and politic for school



ROAD-MAKING

Two views of the same road at Johnson City, Tenn., showing its condition before and after macadamizing.



purposes, its inhabitants being authorized to elect school officers and maintain free schools. Since the schoolhouse in the center of the township affords a convenient place for the citizens to vote for State and national officers, the congressional township, already organized for school purposes, next becomes an election district. Then as the population increases and the volume of public business grows larger, the need is felt for a governmental area smaller than the county to look after such matters as the preservation of order, the building of highways, and the care of the poor; and so to the township is entrusted the election of constables, justices of the peace, superintendents of highways, and overseers of the poor. "In this way a vigorous township government tends to grow up about the schoolhouse as a nucleus, somewhat as in early New England it grew up about the church."¹

Develop-
ment of civil
township

36. Differentiated Types of Township-County System. Two forms of this township-county government have developed, the difference in type being partly due to diversity in the original population. In the southern tier of the Central States, where the early settlers were largely from the Middle States and the South, the importance of the county has been emphasized; while in the northern tier, where New Englanders formed a larger element among the early inhabitants, the position of the township is more important. These two forms of the compromise plan of local government are sometimes called the county-precinct type and the township-county type, the former emphasizing the position of the county, the latter that of the township.

The first of these types, in which the county is relatively more important, arose in Pennsylvania, and has since been adopted with modifications in Ohio, Indiana, Iowa, Kansas, and Missouri. In these States there is no town-meeting nor are the townships represented

Origin of
two types

¹ Wake, John, *Civil Government in the United States*, p. 87.

on the county board. In general the position of the township is one of strict subordination to county authority.

The second type, where the township is more conspicuous, prevails in New York, New Jersey, Michigan, Illinois,¹ Wisconsin, Nebraska, Minnesota, and the Dakotas.

Township-county type In all these States the town-meeting exists, while five of them — New York, New Jersey, Michigan, Illinois, and Wisconsin — follow the so-called New York plan whereby the townships are represented on the county board.

37. The Town-Meeting in the Central States. In the States that have the New York plan, a town-meeting is

Election of township officers held, although its authority is less than in New England. In this meeting all qualified voters of the township are entitled to participate. The annual session is generally held in March or April, special meetings being called by warrant as occasion requires. The most important business at the annual meeting is the election of township officers for the ensuing year. The officers are chosen by ballot, and generally consist of a supervisor, clerk, treasurer, assessor, and overseers of highways, all elected for one year; and two or more constables and justices of the peace, elected for terms varying from two to five years.

Besides its power to elect local officers, the town-meeting has important legislative powers. Numerous matters that are local in character, affecting only the township, are subject to the control of the people in town-meeting. They may make orders concerning the disposition of township property; authorize taxes for roads, bridges, schools, or other lawful purposes; vote to institute or defend suits at law; receive the annual report of township officers charged with the disbursement of money, and direct these officers in the performance of their duties; and generally may enact such by-laws as are deemed conducive to the peace, welfare, and good order of the township.

¹ Except in seventeen counties in the southern part of the State, which have no township organization.

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38. The Township Board and the Supervisor. Under the Pennsylvania plan there is no town-meeting, and the position of the township is less important as compared with that of the county. But in general, the same township officers are chosen as under the New York plan, and the following description of township organization applies to both types.

In some States, general administrative authority over township affairs is vested in a board of trustees or supervisors, varying in number from three to eleven.¹ The township board The powers of this board vary greatly, but its primary duty is to audit the accounts of the township officers, and pass upon all claims against the township. Other important duties are often performed, especially in States where there is no single head officer of the township.

In New England, general executive authority concerning township affairs is lodged in the selectmen. In a number of the Central States, similar authority is vested in a township board; while in others a double headship prevails, administrative authority being divided between the township board and a supervisor or trustee.² The supervisor or trustee has general charge of the township business. He receives and pays out all funds belonging to the township, makes an annual report upon financial affairs to the town-meeting, serves in some States as *ex officio* overseer of the poor, and has other clerical and executive duties.

39. Other Township Officers. The clerk is custodian of the township's records, books, and papers, besides acting as secretary of the town-meeting, and as clerk of the township board. The treasurer has charge of the township funds, and frequently is also *ex officio* collector of taxes for State and county as well as township purposes. Usually all taxes, State as well as local, are as-

¹ In New York, Michigan, Illinois, and Nebraska, this board consists of the supervisor, clerk, and the justices of the peace; in Pennsylvania, of two or more supervisors; in Ohio and Iowa, of three trustees; in Minnesota, Wisconsin, and the Dakotas, of three supervisors; in Indiana, of three freeholders specially elected for this purpose.

² This plan prevails in New York, Missouri, Kansas, Wisconsin, Michigan, Illinois, and Nebraska.

sessed by the township assessor; and this officer is also required in some commonwealths to take an annual census of the inhabitants of his district, and to keep a record of births and deaths. All these officers are elected by the voters of the township.

Poor relief is for the most part a county function in the Central States, although the townships commonly coöperate in the work.¹ Generally the township trustees of the poor act *ex officio* as overseers, their duties being mainly confined to granting temporary relief or deciding what persons are entitled to admission to the county almshouse.

Overseers of the highways are generally elected or appointed from subdivisions of the county known as road districts. These officers are charged with the maintenance of the highways, and are accountable to the township or county board.

Each township elects from two to five justices of the peace, and usually two constables. The justice is both a conservator of the peace and a magistrate with limited civil and criminal jurisdiction. The constable is the local peace officer, and the ministerial officer of the justices' court.

40. The School District. School districts in the Central States are local corporations distinct from the township; but they generally correspond in area with the township or else are subdivisions thereof. In about half of the Central States, the voters in each school district hold meetings, similar to the New England town-meetings, for the purpose of electing school officers and levying taxes for school purposes. The officers or trustees in charge of district schools are generally three in number, elected for terms varying from one to four years. Where there are no school-meetings of the voters, these officers have full control; while in States

¹ In Pennsylvania, New York, and New Jersey, overseers of the poor are elected in the townships and have important duties.

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having such meetings, the trustees carry out the policies adopted and manage the details of school affairs.

41. The County Board in the Central States. The importance of the county, as we have seen, is greater in those States that have the county-township plan of Pennsylvania, less in those that have the New York plan. Under the Pennsylvania plan, general control over county affairs is vested in a board of three commissioners, elected by the voters of the county.¹ Under the New York plan, the larger county board is composed of the township supervisors.²

42. Functions of the County Board. The authority of the county board varies, being greater in those commonwealths having the Pennsylvania plan, and less in those where the New York system prevails. But in all the Central States it possesses considerable powers. The most important may be grouped under five heads.

(1) The erection and maintenance of public works, such as the courthouse, jail, and other county buildings, the construction of bridges, and some control over highways.

(2) Poor relief, including the issuing of warrants for expenses incurred by local overseers, employment of a county physician and a superintendent of the poor, and maintenance of a poor-farm.

(3) The administration of finance and taxation, including the audit of accounts of county officers, levy of county taxes,³ and equalization of township assessments.

(4) A limited degree of supervision over elective county officers, such as approval of their bonds and examination of their accounts.

(5) Certain duties in regard to elections, including the

¹ The commissioner plan prevails in Pennsylvania, Ohio, Delaware, Maryland, Indiana, Iowa, Minnesota, North Dakota, South Dakota, Kansas, and Nebraska.

² The supervisor plan prevails in New York, New Jersey, Michigan, Wisconsin, and throughout the greater part of Illinois.

³ The taxing power is usually limited to authorized purposes and restricted by a maximum rate. The principal items of county expenditure are for courts, roads, and bridges, and poor relief.

establishment of polling-places, issuing of ballots, and canvass of election returns.

43. The County's Judicial Officers. In many States, each county elects a judge, often called a probate judge, who has ~~County and~~ original and exclusive jurisdiction in matters of ~~county-~~ probate, administration, and guardianship. Frequently the voters of the county elect judges for a court of general jurisdiction; but generally judges of these courts are chosen from districts which include several counties.

The chief executive officer of the county court is the sheriff, who is also the general conservator of law and order ~~The~~ ~~sheriff~~ within the county. In case of need, the sheriff has the right to call upon citizens to aid him in enforcing the law (that is, may summon the *posse comitatus*); or if the emergency warrants, he may ask the governor to send the State militia to the county. The sheriff is chosen by the voters,¹ commonly for a term of two years.

The prosecuting attorney² is the officer elected to conduct criminal prosecutions, also to represent the county in ~~Prosecuting~~ ~~attorney~~ civil suits, and in general to act as its legal adviser. Another elective official is the coroner,³ ~~and coroner~~ who with the aid of a jury investigates the cause of mysterious or violent deaths.

44. Financial and other County Officers. The treasurer is custodian of the county funds, and generally *ex officio* collector of county and State taxes. The money thus ~~Treasurer~~ collected is placed in different funds, as the general fund, school fund, and so forth. The treasurer is commonly elected by the voters. Two years is the usual term, and the State constitution frequently provides that no person shall serve for more than four years in succession.

The most important administrative officer is the county clerk, or auditor as he is known in some States. He is sec-

¹ Except in Rhode Island, where this officer is chosen annually by the general assembly.

² Also known as State's attorney, district attorney, county attorney or solicitor.

³ In Massachusetts an appointive officer, the medical examiner.

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secretary of the county board and custodian of all records; and he acts as a check upon the county treasurer, <sup>County
clerk or
auditor</sup> keeping an account of all receipts and expenditures, and countersigning warrants drawn upon the treasurer. In several commonwealths he also acts as clerk of the courts, while elsewhere a special officer is chosen for this duty.

Taxes are generally assessed by precinct or township officers and equalized by some county authority; but a county assessor is elected in a number of States.¹ <sup>Other
county
officers</sup> Other county officers are the recorder or register of deeds; the clerk of the district or circuit court; the county land surveyor; county boards of health; and (in most States) a county superintendent of schools, who is entrusted with the general oversight of the county school system.

45. Local Government in the Western States. In the States of the Far West as in the South, the county is the all-important unit of local government. Western county officers correspond in general to those of the Central States. The county boards usually consist of three commissioners, who have general administrative authority, including power to establish school and road districts.

Within the county's subdivisions — generally called precincts, one or more justices of the peace and constables are chosen by the voters. Owing to the scattered <sup>The
Western
county</sup> population throughout most of this region, these <sup>Minor
areas</sup> areas perform few functions as compared with the townships of the Central States.

¹ Including Missouri, Washington, California, Oregon, Nevada, Colorado, Wyoming, and the Dakotas.

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QUESTIONS AND EXERCISES

(Questions 1-8 are for pupils living in New England.)

1. How many towns in your State? What is the population of the largest? Of the smallest?
2. Does town government in New England tend to decrease in importance?
3. How many representatives has your town in the legislature? Has this apportionment been made in accordance with the population of the town?
4. Prepare an account of your town-meeting, discussing the following topics: (a) how composed; (b) method of calling same; (c) how conducted; (d) functions, including election of town officers, making of appropriations, enactment of by-laws.
5. Organize the class into a town-meeting, and discuss live local questions in accordance with articles in a warrant.
6. Describe the board of selectmen of your town, giving their names, term, and functions.
7. Give the same facts concerning the other executive officers of your town.
8. What local courts exist in your town, or in districts including several towns? What cases do they try?

(Questions 9-15 are for pupils living in the Central, and Middle-Western States.)

9. How many townships in your county? Name them.
10. Does the system of local government in your State belong to the county-precinct type, or to the township-county type? (Section 80.)
11. If there is a township board, give the number of members, term, and functions.
12. If supervisory authority is vested in a single officer, give his title, term, and powers.
13. If there is a town-meeting, answer question 4, above.
14. Give the names, term, and functions of other township officers.

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18. How are justices of the peace chosen? What cases are tried before them?

(Questions 16-17 are for pupils in the South and Far West.)

16. What is the name of the subdivision of the county corresponding to the township in the Central States?
17. Give the names, method of selection, and functions of the officers chosen within this area.

(The remaining questions are for pupils in all sections.)

18. Which of the following public or governmental functions are performed by your county? (a) Administration of justice; (b) collection of State taxes; (c) holding of State elections; (d) probating of wills; (e) recording of land titles.
19. Which of the following functions pertaining to local needs are performed by your county? (a) Levy and collection of local taxes; (b) administration or supervision of schools; (c) construction and maintenance of local public works; (d) administration of charities and corrections; (e) holding of local elections; (f) enactment of local police regulations.
20. Prepare an outline showing all the functions performed (a) by your town or township; (b) by your county.
21. Are your roads laid out and maintained by the county or township? What was expended for this purpose last year? Are they well improved and cared for? Should the State aid in road-making?
22. Does your county elect a county judge? Or is this officer chosen by a judicial district including several counties?
23. For what term is the county judge chosen? What cases does he try?
24. Is there a probate judge in addition to the county judge? Over what matters has he jurisdiction?
25. Who is the sheriff of your county? How chosen? Term? Authority?
26. Other judicial officers of the county generally include a coroner, prosecuting attorney, and clerk of the court. Give the names, method of selection, term, salary, and duties of each.
27. Legislative authority in county affairs is commonly exercised by a county board. Does your board belong to the Pennsylvania type or to the New York type? (Section 41.)
28. How many members compose your county board? How are they chosen, and for what term? Describe their powers.
29. Give the method of choosing, term, and duties of each of the following officers (if found in your county): clerk or auditor, treasurer, recorder or register of deeds, surveyor, assessor.
30. Give the same details concerning any other officers in your county not included in this list.
31. Are your county officers paid by fees or salaries? By whom is their remuneration determined? Which are the most lucrative offices?
32. Are the representatives in your State legislature apportioned by counties?

CHAPTER IV

MUNICIPAL DEVELOPMENT

46. Definition of City. If we analyze our conception of the term city, we shall find that it includes at least three essential elements: (1) a considerable number of people, who (2) occupy a definite and compact territory, and (3) possess a local government organized with especial reference to their social and economic condition. Hence a city may be defined as "a populous community inhabiting a definite, compactly built locality, and having an organized public authority."¹

Like rural local governments, the city has a dual character, being an agent of the State government as well as an organ for the satisfaction of local needs. Thus in its public or governmental character the municipal corporation represents the State, which entrusts it with the performance in a particular locality of certain governmental functions — such as local taxation, the administration of justice and of the schools, the control of elections and of the public health, and the support of the poor. On the other hand, in its private or proprietary character the municipality is an organ for the satisfaction of local needs, such as the construction of sewers, paving, cleaning, and lighting of streets, supplying water, administration of parks, regulation of municipal transportation — matters which interest the commonwealth only indirectly, but which are of vital local concern.

47. Origin of Cities. Economic causes create cities and make urban life possible. So long as agriculture is the sole occupation of a people, cities cannot develop, since this industry necessitates a scattered popu-

¹ Fairlie, John A., *Municipal Administration*, vii.

lation. But with the creation of a surplus food-supply, men develop other and higher wants than the mere subsistence wants satisfied by agriculture. Division of labor then occurs, and commerce and manufactures arise — industries which tend to bring people together in compact communities. Thus the existence of cities is the result and sign of a separation of occupations. It is also an indication of economic progress. Countries in the forefront of modern civilization have a large urban population, while the contrary is true of more backward nations.

48. Development of Cities. Just as cities owe their origin to the economic fact of a surplus food supply, so to economic factors is due the great development of cities in Economic factors modern times. Three of the most important are:

(1) the industrial revolution, inaugurating the factory system of modern industry with its irresistible tendency to mass population in large centers; (2) extensive improvements in agriculture, displacing rural laborers, who seek employment in the cities; (3) a marvelous development of transportation which has made possible an unprecedented interchange of products.

In the United States the growth in urban population has been most striking. In 1790 about $3\frac{1}{2}$ per cent of the people lived in cities; at the present time about 51 per cent. In 1790 there were six cities with over Urban population in the United States 8000 population; in 1920 there were 68 cities with a population of 100,000 or more. From 1790 to 1920, the total population of the United States increased from 3,929,214 to 105,710,620; the urban population from 131,472 to more than 54,000,000.

49. English Origin of American Municipal Institutions. Just as the English system of rural local government furnished the pattern for the system first established in America, so the English municipal borough of Influence of English system the seventeenth century was the prototype of the early American city. Both the organization of the English

borough and the theory of English law as to the relation of the borough to the central government have profoundly affected American municipal development; and hence the nature of the American city will be better understood if we know the leading characteristics of the type from which it has developed.

50. Characteristics of British Municipal Government. Complete subordination of the municipality to the central government has been a prominent feature of British municipal administration. In marked contrast to the city-states of the ancient world, which were local communities with sovereign governmental powers, is the British municipal borough created by, and entirely subject to, the central government or Parliament.

Furthermore the British Parliament has usually been very tenacious of its authority, and has consequently granted the cities comparatively limited powers, to be exceeded only by its own permission granted in special acts. From early times the theory has prevailed that so far as public powers are concerned, municipal corporations are merely the delegates of Parliament, which is the ultimate source of all governmental power. Hence it has followed that the powers granted by Parliament to municipalities have been carefully limited and minutely specified.

From early times to the present, the central fact in the government of the British municipality has been the council. By the provisions of the Municipal Code of 1882, the council consists of the mayor, aldermen, and councilors. The municipality acts through its council, the body which exercises all powers vested in the corporation.

51. American Municipal History. Turning now to the American municipality, we may divide its history for convenience of treatment into five periods: (1) 1641-1775; (2) 1775-1825; (3) 1825-1850; (4) 1850-1875; (5) 1875 to the present time.

52. Colonial Cities. Twenty cities received charters during the period of colonial history from 1641 to 1775. The oldest American city is New York, which received ^{Early charters} its first charter in 1686. Trenton in 1746 received the last charter granted in colonial times. As in Great Britain charters were granted by the executive, so following this practice the colonial charters were granted by the governors.

The form of municipal organization closely resembled that of the contemporary English borough. Practically the entire authority was vested in a council, which consisted of the mayor, recorder, aldermen, and ^{Municipal organisation} councilmen, acting as a single body. The mayor was sometimes appointed by the governor, sometimes elected as in England by the council. His functions were to preside at meetings of the council and to execute the ordinances passed by that body. The administrative authority of the council was limited chiefly to matters of local concern, the public or governmental side of the corporation's life being then but little developed.

In two important respects American colonial cities differed from the English boroughs of that period. (1) In America close corporations were the exception. In only three cities ^{Distinctive American features} ¹ were the councils self-perpetuating bodies, elsewhere control of the city being in the hands of its residents. (2) The mayor was not as in England a dignified figure-head, but from the first possessed a considerable control over municipal affairs.

53. Relation of Cities to State Governments. The theory of the English law as to the complete subordination of the city to the central government was closely followed. Under the American system, the municipality is regarded as a creature of the State legislature, and in the absence of constitutional restrictions, the legislature

¹ These were Philadelphia, Annapolis, and Norfolk; but this undemocratic government did not survive the Revolution.

may deal with the city as it pleases. It may enlarge or contract its powers, change its framework of government, or even entirely destroy its existence.

Furthermore, in passing upon the question of municipal powers, American courts have accepted the rule of the ~~Strict construction of powers~~ English common law, that grants of municipal power (like all grants of corporate powers) are to be construed strictly, doubtful questions of authority being resolved against the municipality.

54. Second Period of American Municipal History. During the years from 1775 to 1820, two features of municipal development are especially important.

(1) The practice of conferring charters by the executive gave way to the present method of granting them by the ~~Charters granted by legislature~~ State legislature. Hence the theory that the charter is merely a statute conveying no irrepealable grant to the city; for as a legislative measure it is liable to be altered or repealed by subsequent acts.

(2) The subordination of municipal affairs to the issues of State and national politics was noticeable; and this ~~The spoils system~~ tendency, involving also the spoils system as a principle of office-holding, has since become a characteristic feature of our municipal government.

55. Third Period — 1825-1850. Among the characteristics of municipal history during the third period are the following.—

(1) A large number of new cities arose, forty of the cities whose population is now over 30,000 having been first chartered during this period.

(2) The present method of choosing the mayor by popular vote was introduced, supplanting the former methods of State appointment or council election.

(3) Manhood suffrage became universal, superseding the property qualifications prescribed by some of the early charters.

(4) Several cities, including Boston, New York, and

St. Louis, adopted the two-chamber plan for the organization of their councils.

56. **Fourth Period - 1850-1875.** An important development during this period was the great increase of municipal functions owing to the rapid expansion of urban population. During these years our modern system of paid police and firemen replaced the earlier volunteer system; and the construction of waterworks, sewer systems, and establishment of city parks were added to the list of municipal activities. Functions which had been carried on formerly, such as maintenance of schools, street-paving, and poor relief, expanded in importance, resulting in a large increase in municipal taxation and indebtedness.

Increase of
municipal
functions

The unwillingness of the State legislatures to grant large powers to cities, together with the legal doctrine of strict construction of municipal powers, made it necessary for the cities to apply frequently to the legislature for special acts granting additional powers.

Special
legislation
for cities

Especially was this necessary in order to secure additional financial powers. By virtue of these special acts the State legislatures rather than the municipal council determined the local policy of municipalities.

Owing to the establishment during this period of street-railway systems and the extension of gas-lighting, the power of councils to enter into contracts conferring valuable privileges, that is, to grant franchises, became very important. In making such grants, councils were commonly heedless of the interests of the cities, and were often corruptly influenced by the corporations desiring the privilege. Franchises were ordinarily conferred without any compensation to the city for the use of the streets, and sometimes without any limitation as to the duration of the grant.

Franchise
grants

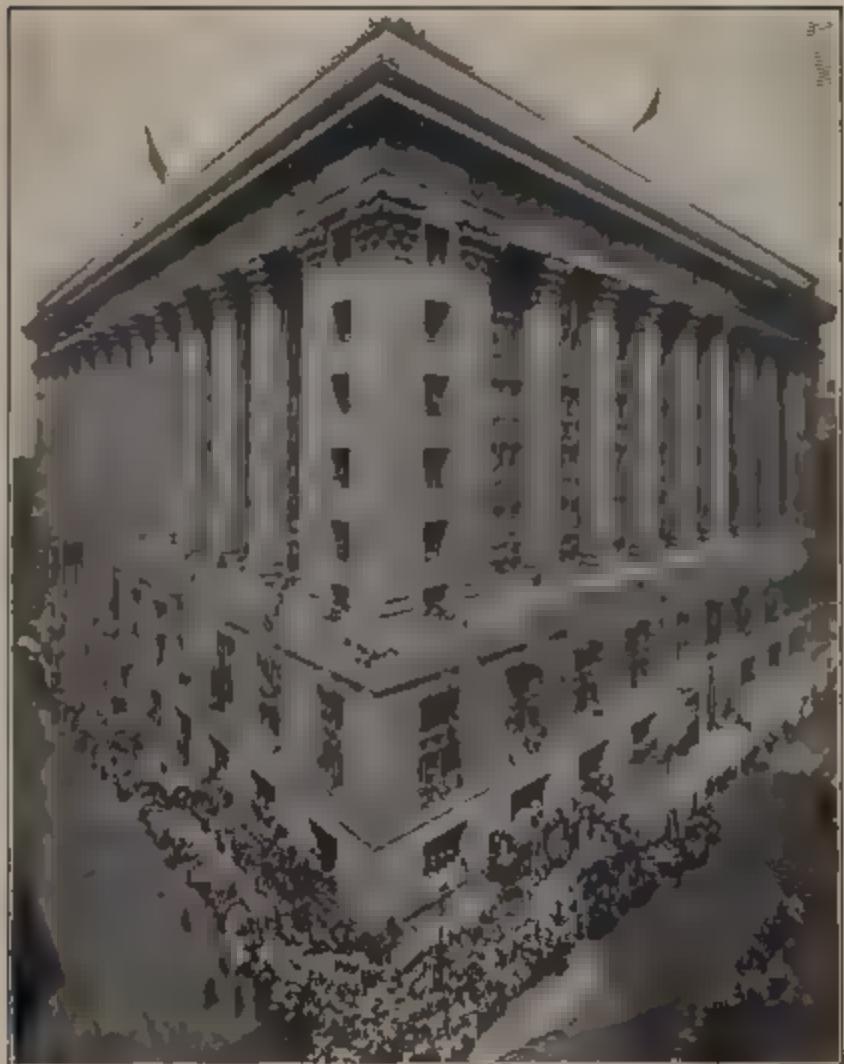
57. **Changes in Municipal Organization during Fourth Period.** Another important characteristic of the period

from 1850 to 1875 is the decline of the city council, which in earlier times had been the central fact in city government. Partly as a result of dissatisfaction with council management, that body lost many of its former legislative and financial powers. Furthermore, the council lost its former power to appoint the various city officials, and these were chosen by popular vote, a change partly due to the democratic spirit characteristic of this period.

Many of the powers formerly exercised by the council were entrusted to elective municipal boards, such as park, library, and waterworks boards. Such officials as the city solicitor, civil engineer, and superintendent of public works were commonly elected by popular vote.

Many commonwealths established State boards or commissions, generally appointed by the governor, to control municipal affairs. Thus a State park board was created for New York City, a State commission to build Philadelphia's city hall, and State police boards in New York, Baltimore, Detroit, and other cities. The pretext for such action was the mismanagement on the part of the local authorities; but the transfer of municipal functions to boards in no way responsible to local taxpayers generally proved even more unsatisfactory.

58. Recent Municipal History, 1875 to the Present Time.
The volume of special municipal legislation, large during the preceding period, now increased so greatly as seriously to impair local self-government on the part of urban residents. Recognizing the evils of excessive legislative intervention in local affairs, many States finally adopted constitutional provisions designed to safeguard certain rights of local self-government. Thus twenty-three commonwealths have adopted constitutional limitations forbidding their legislatures to pass special acts concerning cities. These restrictions have been frequently evaded in States whose courts have held that an act is not special



By courtesy of the York Construction Company

THE CITY HALL AT CHICAGO, ILLINOIS



A TYPICAL NEW ENGLAND TOWN HALL
At Needham, Mass.



(By courtesy of the Superintendent of Public Improvements.)

THE MUNICIPAL BUILDING AT DES MOINES, IOWA.



INTERIOR OF THE DES MOINES MUNICIPAL BUILDING

Practically the entire business of the city is transacted in this one large counting-room. Here are the offices of all the various departments of the city government, except those of the police and the fire department, which by their nature require *separate quarters*.

provided it applies to a class of cities, even though the "class" includes but one city.

A second method of limiting the power of State legislatures over cities is that followed in New York. In this commonwealth all measures referring to a single city, ^{New York} or to less than all cities of a class, after being ^{plan} passed by the legislature must be referred to the municipal authorities for approval. In cities of the first class (over 175,000 inhabitants), such a measure must be approved by the mayor; and in cities of the other two classes by the mayor and council. If approved by the proper municipal authority, the bill is sent to the governor for his approval or veto; but if disapproved by the local authority, it goes back to the legislative house where it originated, and does not become law unless repassed by the ordinary majority in each house.

A third method of securing municipal home rule is followed in twelve commonwealths.¹ These States have adopted constitutional provisions allowing some of their cities to frame and amend their own charters, provided such charters and amendments are consistent with the constitution and general laws of the State.

59. Changes in Municipal Organization. Within recent years there has been a marked effort to secure a more definite responsibility for the management of city affairs. Sometimes this has been accomplished by giving the mayor larger powers, while those of the council are correspondingly reduced. Other cities have abandoned entirely the mayor-council plan, and have adopted either the commission plan, or the city manager plan.

60. The Commission Plan. The most serious defect in the government of our cities has been the absence of direct responsibility for the management

^{Galveston system}

¹ Including Arizona, California, Colorado, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oregon, Oklahoma, Texas, and Washington.

of affairs. Executive and administrative functions are distributed among numerous boards and officials in such a way that it is almost impossible to locate responsibility. To correct this condition, many cities¹ have recently adopted the commission plan of government, which aims to secure definite responsibility by centralizing municipal powers in the hands of a few men. Thus the Galveston charter entrusts the entire city administration to five commissioners elected at large for a term of two years, one of whom is given the title of mayor-president. Each of the other four is placed at the head of one of the departments of municipal administration — namely, finance and revenue, water-works and sewerage, police and fire protection, streets and public property; while the mayor-president exercises a general coördinating influence over all four departments. The commission acting as a whole is empowered to pass municipal ordinances, vote appropriations, award contracts, and make important appointments (minor ones being made for each department by the commissioner in charge).

The commission system of government also prevails in Des Moines, Iowa, but with important restrictions designed ~~Des Moines~~ to assure popular control. Thus the Des Moines ~~plan~~ plan provides for the initiative, referendum, and recall; establishes a merit system for city employees; and requires a popular referendum on all franchise grants.

The advantages claimed for the commission plan are: — (1) definite location of responsibility resulting from the ~~Advantages~~ complete centralization of municipal powers; (2) ~~and defects~~ lessening of civic corruption; (3) approximating the government of the city to that of a business corporation in which ample powers are generally entrusted to a small board of directors; (4) greater promptness and effi-

¹ The commission form of government has now been adopted by 562 cities (December, 1919). Of the 304 cities with over 30,000 population, 82 are governed under this plan. The largest cities that have adopted the commission plan are Birmingham, Buffalo, Jersey City, Lowell, Nashville, Newark, New Orleans, Oakland, Omaha, Portland, Spokane, and St. Paul.

ciciency in action owing to the small number of administrative officers. Those opposed to the commission plan urge (1) that it is undemocratic and un-American, virtually amounting to a receivership for the municipality in which it exists; (2) it narrows the educative work of local government by decreasing the participation of citizens in public affairs; (3) it increases the influence of party organization by enabling them to concentrate their efforts upon the few elective commissioners; (4) it places the appropriating and spending power in the same hands; and (5) the absence of a local council constitutes an incentive to State interference in municipal affairs.

61. The City-Manager Plan. A recent modification of the commission form of government is known as the "city-manager" plan. This provides for a small elective commission, but the commission does not itself exercise administrative powers. For the general management of the city's affairs, the commission appoints an expert administrator, or city manager. The city-manager plan aims to secure permanent, expert service for the city's administration, in the same way that a large corporation selects an expert and capable manager for its affairs. Responsibility for the city's administration is centered chiefly in the manager, since the commission usually gives him wide latitude. If the city's affairs go wrong, the voters know whom to blame. The manager may be chosen from within or without the city; for example, the successful city-manager of Staunton, Virginia, was chosen to fill a similar position in Springfield, Ohio. About one half of the city managers have had technical training as engineers. Nearly 150 smaller cities are now governed under this plan, and its adoption is authorized by law in thirteen States.

62. Proposed Improvements in Municipal Government. As the causes of the misgovernment of cities have become better understood, more definiteness has been given the plans of those seeking to improve conditions. The chief

steps now proposed as a means to possible improvement may be summarized under the following heads.—

(1) The effectual prohibition of special municipal legislation, and the granting to cities of general rather than enumerated powers.

(2) Definite placing of responsibility for the city's administration by the adoption of the commission plan or the city-manager plan, or by giving the mayor larger powers and responsibility.

(3) A restriction of the spoils system in city politics through the adoption of some form of municipal civil service.

(4) The separation of municipal from State and national elections. In many commonwealths, municipal elections are now held at a different time of year from other elections, in the hope that candidates for local offices may be chosen on account of individual fitness rather than from a partisan standpoint.

(5) The exercise of the utmost care in granting franchises to public service corporations, in order that the people of the city may receive an adequate compensation in return for the privileges granted. The referendum or popular vote on franchises eliminates a great source of municipal corruption by placing the ultimate decision concerning franchises in the hands of the people themselves.

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QUESTIONS AND EXERCISES

1. Write an account of the rise and growth of cities in the United States, paying especial attention to the factors in urban development.
2. Write a brief account of the changes of government in your community — the transition from town, village, borough, or county government to city government.
3. Explain the reasons for this change. Point out the needs which are created by urban life (water-supply, sewer system, street lights), and explain why city governments are better fitted than rural governments to meet these needs.
4. What economic causes have contributed to the growth of your city?
5. What was the population of your city at the census of 1910? Population in 1900? Percentage of increase?
6. Make a list of the six largest cities in your State, and give their population; same for the United States.
7. What is the area of your city? Into how many wards is it divided? In which one do you live?
8. When did your city receive its first charter? What is the date of the present charter?
9. By which of the following methods was your city charter granted: (a) special act of the legislature giving your city a charter peculiar to itself; (b) a general legislative act providing a form of charter applicable to all cities of a certain size; (c) under a special constitutional provision permitting cities of a certain size to frame their own charters.
10. How may your city charter be amended?
11. Does your State constitution prohibit special legislative acts concerning cities? Why is such special legislation objectionable? (Section 58.)
12. Point out the dual character of your city government: (a) as an agent of the State for the performance of governmental functions; (b) as an organ for the satisfaction of local needs. (Section 46.)
13. In which of these fields may the State government properly exercise greater control?
14. Is there a State commission having authority over any affairs in your city? Are such commissions prohibited by your State constitution?
15. Have you a municipal league, taxpayers' association, or similar organization which seeks to improve municipal conditions?
16. Is there a Chamber of Commerce in your city? Purposes?
17. Suggested readings on municipal government: Kaye, P. L., *Readings in Civil Government*, pp. 336, 367.

CHAPTER V

MUNICIPAL ORGANIZATION

63. The Mayor-Council Plan. Of the three types of city government in the United States (mayor-council, commission, and city manager), the mayor-council type still prevails in a majority of our cities. This form of municipal organization is therefore the one described in this chapter; but students living in commission-governed cities will find that practically all of the powers of the council and mayor as described below, are exercised by the commissions in their cities.

Where the mayor-council plan of city government prevails, the council is commonly a single-chamber body.

Organization of the council This is the prevailing type for the smaller cities as well as for a majority of the larger ones. Most of the latter have at one time or another tried the double-chamber council; but many have returned to the plan of a single chamber.

Where the council consists of a single chamber, it is ordinarily composed of one member from each ward or district **Election of members** into which the city is divided; but in some cities councilmen are chosen by general ticket.¹ Where the double-chamber system prevails, the upper house or board of aldermen is often chosen at large, or from districts embracing several wards. The size of the council varies greatly, averaging from twenty to thirty members in the larger municipalities, and from five to fifteen in the smaller ones.

The universal qualification for councilmen is that they must be voters of the city in which they live; and generally

¹ That is, by the voters of the entire city.

they are required to be residents of the ward for which they are chosen. The negative qualification is often added that members shall not hold any other public office. The term varies from one to four years, two years being perhaps more general. Where the term is two years, half the members are often chosen annually. Councilmen are usually unpaid in the smaller cities, but in many of the larger ones receive salaries ranging from \$300 to \$5000.

64. Legislative Powers of the Council. In the United States, as in Great Britain, the powers conferred upon municipalities are always enumerated in detail; and the courts of both countries hold that municipal powers are to be strictly construed, doubtful questions of authority being resolved against the municipality. This rule of strict construction in connection with the system of enumerated powers has necessitated a multitude of provisions in every municipal charter, since each particular power must be declared beyond doubt.

65. The Council's Police Power. The most important powers of municipal councils are those which may be classed under the head of the police power, by which is meant the power of government to enact such laws as are necessary to the health, comfort, and protection of society. The police power of the State government is a general power limited only by the restrictions of the State and the national constitution; and each commonwealth delegates to the cities within its borders a portion of this power — generally including the right to pass ordinances for the promotion of the public health, security, and comfort, and for the protection of the public morals.

66. Financial Powers of the Council. One of the most important powers granted city councils is that of levying taxes to defray expenses incurred in the performance of municipal functions. The legislatures ordinarily confer this power subject to important limitations as to the

purpose and rate of the tax. Thus the tax must be for a public purpose, and one which is authorized directly or impliedly by the terms of the municipal charter; and it is commonly provided that the rate shall not exceed a certain number of mills on each dollar of valuation of taxable property. The form of tax most largely relied upon for municipal revenues is the general property tax, the levy for city purposes being ordinarily collected along with the county and State taxes.

To defray the expense incurred in making certain local improvements, such as street-paving and sewer construction, it is customary to levy upon the abutting property-owners special assessments upon the theory that they receive a special benefit from the improvement in question. Thus in most cities when a street is opened, graded, or paved, the cost is borne mainly by the abutting property-owners (upon whose initiative such improvements are often undertaken).

Licenses of certain occupations and amusements constitute another important source of municipal revenue. A

Licenses license may be either a police regulation to prevent some real or threatened evil, or it may be a tax upon certain lines of business. In many cities, proprietors of theaters and other places of amusement, owners of vehicles, pawnbrokers, peddlers, and second-hand dealers are required to pay a license.¹

Municipal corporations have implied authority to incur indebtedness in anticipation of the general revenue fund, **Borrowing power** but unless authorized by the legislature, cannot borrow money or issue bonds as evidence of indebtedness. Municipal charters generally contain provisions authorizing the council to borrow money for public purposes, as for street-paving, or construction of waterworks and lighting-plants. When a city borrows money, municipal

¹ In Northern municipalities, licenses are commonly required only for a few specified purposes; but in the cities of the South, the licensing system is more largely used.

bonds are issued which are in effect the promissory notes of the corporation. These bonds are ordinarily in denominations of \$500 or \$1000, for a term varying from twenty to fifty years, at four to six per cent interest. They are sold to the highest bidder after due notice by publication.

67. Miscellaneous Powers of the Council. Eminent domain, or the right to take private property for public purposes, is a power commonly delegated by the legislature to municipal corporations. City councils generally have power to appropriate private property under the following conditions: (1) the property must be for a public use;¹ (2) notice must be given to the owner; and (3) the property must be appraised in the manner prescribed by law, and the owner compensated for its appropriation.

Municipal councils are sometimes made the agents of the State government for the control of education and poor relief within the corporation; but more commonly these functions are entrusted to local boards more or less independent of the council.

Like private corporations, cities may purchase and hold property for municipal purposes. Cemeteries, waterworks, parks, markets, hospitals, libraries, gas and electric lighting-plants are forms of property regarded by the courts as belonging to the municipality in its private or corporate rather than in its public or governmental capacity.

Municipal councils have implied powers to make such contracts as may be necessary to carry out the purposes for which the corporation was created, and these contracts may be for a longer term than the life of the council making the grant. The most important municipal contracts are franchises or grants of exclusive privileges to companies organized to furnish transportation, lighting, heat, and telephone service.

¹ The public uses for which property may be appropriated include parks, streets, canals, sewers, prisons, hospitals, markets, cemeteries, school buildings, libraries and other public buildings, waterworks, gas and electric lighting-plants.

68. Procedure in City Councils. Regular meetings of the council are held at stated times, generally weekly or bi-weekly, special meetings being called from time to time as needed. Like other legislative bodies, municipal councils determine their own rules of procedure, and keep a journal of their proceedings. Generally they have power to compel members to attend and vote.

Like Congress and the State legislatures, city councils are commonly divided into committees to which proposed legislation is referred for consideration. Among the important committees are those on ways and means, streets and sidewalks, sewers, markets, printing, public lighting, transportation, rules and ordinances, and municipal bonds.

The legislation passed by the council ordinarily requires three separate readings, and unless the rules are suspended these must be at three different regular meetings.

Any member of the council may introduce a proposed ordinance, whereupon its title is read and the measure referred to the proper committee (this constituting the first reading). At a subsequent meeting, if the committee reports favorably, the second reading may take place, the ordinance being read, in full or by title only; and at a third meeting, after being read the measure may be voted upon. If approved by a majority of the council, it is signed by the presiding officer, and unless the mayor has the veto power, it then becomes an ordinance or by-law binding upon all persons within the city. Frequently the municipal charter gives the mayor power to disapprove any ordinance passed by the council; and a measure which is vetoed does not become effective unless the council again passes it by a two-thirds vote — in some cities by a three-fourths or four-fifths vote.

It is often required that ordinances be published in newspapers of general circulation within the municipality, sev-

eral publications during consecutive weeks being commonly prescribed. To be valid, ordinances must be ~~validity of ordinances~~ authorized by the municipal charter or by a State ~~ordinances~~ statute; and they must not conflict with any laws of a superior nature, such as a provision of the State constitution or statutes, or of the federal constitution, statutes, or treaties.

69. The Mayor. The chief executive officer of the city is the mayor, who is generally elected by popular vote. This officer is usually chosen for a two-year term in ~~Election, term, salary~~ the larger cities, but in New England and in the ~~term, salary~~ smaller municipalities a one-year term is common. The mayor receives a salary which varies from a few hundred dollars in the smaller municipalities to \$15,000 in New York City.

70. Legislative Powers of the Mayor. In the smaller municipalities and in a few of the larger ones, the mayor is the presiding officer of the council with a casting ~~Relation to council~~ vote in case of a tie. But in a majority of the larger cities, he is not a member of the council and his relation to that body more nearly resembles that of the governor to the State legislature. He submits to the council annual and special messages recommending desirable legislation; and in most cases he has a limited veto upon ordinances and resolutions passed by that body.

In many recent charters, the mayor is given the power to veto particular items in an appropriation bill while approving the rest of the measure. Generally he has several days (varying in number from three to fourteen) for consideration of legislation; and if he does not sign or veto the ordinance within that period it becomes effective without his signature.

71. The Mayor's Administrative Powers. Although in nearly all American cities the mayor is in theory the head of the administration, the extent of his actual control greatly varies. In early days his administrative powers were narrowly limited, and in many smaller cities he is still little more than a presiding officer of ~~Under council government~~

the council with a casting vote in case of a tie, or in some cases with a qualified veto upon legislation. In these cities the subordinate executive officers are generally elected by popular vote or appointed by the council. This system is virtually council government except as modified by the mayor's veto power.

In a second class of cities the mayor has considerable power over appointments, and generally nominates the heads of the administrative service subject to confirmation by the council. But he cannot exercise complete control over the administration, since these officers cannot be removed except for cause, and even then the concurrence of the council is generally necessary. Thus responsibility for the administration is divided between the mayor and the council so that neither can be held accountable; and this lack of responsibility has made possible much of the inefficiency and corruption of city governments.

Finally, in a third class of cities, especially the larger ones, recent charters have given the mayor the power to appoint, without the approval of any other authority, the heads of the executive departments; and also the right to remove them at his own discretion at any time during his term. This type of city government has been called the mayor system, since it makes this officer the actual and responsible head of the entire municipal administration.

In all cities the mayor exercises general supervisory powers over the municipal departments. The extent of this authority varies, being most important in those municipalities where the mayor has the power to appoint and to remove department heads. In nearly all cities he may at least investigate complaints against particular departments, make recommendations to the administrative heads, and inspect books and records. In cities having the board system of municipal administration, he is frequently an *ex officio* member of the various boards.

The mayor is the chief conservator of the peace for the city as the sheriff is for the county, and has similar powers with regard to quelling riots and calling upon the ^{A peace officer} governor for the State militia.

72. **Judicial Powers of the Mayor.** In nearly all municipalities the mayor has the powers of a justice of the peace. In most of the larger cities the mayor's court, ^{Justice of} formerly an important institution, has fallen into ^{the peace} disuse, the mayor's judicial powers having been transferred to the police judges and judges of the municipal courts. But in the smaller cities, and generally in Delaware, Iowa, and the Southern States, the mayor still exercises judicial powers.

73. **Administrative Officials.** Greater diversity prevails in the administrative machinery of American cities than in any other feature of municipal organization. ^{Diversity} Ordinarily the larger cities have departments of public works, police, fire, health, law, elections, education, libraries, parks, finance, and charities and corrections.

For the selection of administrative officers, many plans are in use, including election by the council, appointment by the mayor with or without the council's confirmation, ^{Selection} election by popular vote, and appointment by the State governor. Appointment by the mayor with ratification by the council is the common method, but several recent charters give him the exclusive power of appointment. The treasurer and comptroller are generally elected by popular vote, as are often the police judge, city solicitor, tax assessors, members of boards of public works, and of boards of education. Appointment by the governor is exceptional, but prevails in case of the police and health boards of some cities. Few legal qualifications are prescribed for administrative officials, and in practice little heed is paid to the candidate's fitness for the particular office which he is seeking.

The term of administrative officials¹ varies from one to

¹ In Great Britain the term of corresponding officials is three years, in France, four years.

six years, generally being longer in case of members of municipal boards. For subordinate administrative officials, permanence of tenure is secured through civil service in more than two hundred cities, including Philadelphia, Chicago, Milwaukee, New Orleans, and all cities in New York, Massachusetts, and Ohio; elsewhere municipal offices are too often regarded as political spoils.¹

As a general rule municipal officers receive salaries, especially in the larger cities. Frequent exceptions to this rule are the members of school, library, and park boards. If members of a board receive no salary they are expected to devote only a part of their time to official duties, the routine work of the department being performed by salaried officials.

74. Board System vs. Single Commissioner System. In Great Britain municipal administration is carried on by boards composed of members of the council: in France there is a single commissioner in charge of each department. Both systems exist in this country, but the tendency seems to be in favor of the single commissioner plan. However, such fields of administration as the schools, libraries, parks, public health, police, and public works are frequently managed by boards. The board system secures continuity of policy and greater permanence of tenure for executive officers, since the membership is only partially renewed at one time; and this plan also makes it possible to obtain the unpaid services of able men, who can thus assume the general direction of public business without making too great personal sacrifices. But these advantages are gained at the sacrifice of the administrative efficiency and power of prompt action possible under the commissioner system.

¹ Other large cities under civil service rules are Newark, Minneapolis, Kansas City, Mo., Denver, Seattle, Tacoma, Portland, San Francisco, Los Angeles, and Detroit.

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QUESTIONS AND EXERCISES

1. Does your council consist of one chamber or of two? Advantages and disadvantages of each plan of organization?
2. Of how many members does your council consist? How does it compare in size with other city councils in your State? Give the qualifications, terms, and salary of members.
3. Are the members elected by wards, by districts including several wards, or at large? What are the advantages of each method, or of a combination of two methods?
4. Give the boundaries of the ward or district in which you live. Who is your representative in council?
5. Are members nominated by party conventions, direct primaries, or by petition (nomination papers)? Which method do you consider preferable?
6. Name the officers of the council. How chosen? Duties?
7. How do the police powers of your council compare with those described in Section 65?
8. Describe the financial powers of your council under the following heads: (a) taxation, (b) appropriations, (c) borrowing power. Make a list of the purposes for which the council may exercise each of these powers.
9. What power has your council over the administrative departments of the city (such as the police or fire departments)? Does it appoint and may it remove administrative officers?
10. How many committees in your city council? How chosen? Name the important ones.
11. State the advantages and defects of the committee system of legislation.

12. What is a city ordinance? Where does the council derive its power to pass ordinances? With what higher laws must a municipal ordinance conform?
13. Describe the procedure, step by step, by which an ordinance is passed. Compare with the procedure described in Section 68.
14. Has your mayor the veto power? If so, what vote is necessary to pass an ordinance over his veto?
15. Under what conditions may your council grant a franchise?
16. When does your council meet? Where? Visit a council meeting and write an account of it.
17. State the following facts concerning your mayor: how elected, term, qualifications, salary, how removed.
18. Describe fully the mayor's legislative powers. Has he any judicial powers?
19. What administrative officers does the mayor appoint? Can he remove these officers? Is the consent of the council necessary in either case?
20. What degree of control does your mayor exercise over the city administration? Which of the three types of mayors, described in Section 71, does he resemble?
21. In case of a serious disorder or riot in your city, what would be the duty of the mayor?
22. Make a list of the other important executive officers of your city. State how they are chosen and describe their duties. Do these officers belong to the same political party as the mayor? Are they subject to his control?
23. Make a list of the various boards and commissions in your city government. How is each chosen? State the number of members, terms, and duties.
24. What are the advantages and disadvantages of the board system of administration as compared with single commissioners or heads of departments?
25. Is there a civil service commission in your city? If so, describe its duties.
26. What courts exist in your city? Over what cases have they jurisdiction? How are the judges chosen? Is there a juvenile court? If so, describe its working.
27. Make a study of the last financial statement of your city and prepare a report showing: (a) the amount and sources of the city's income for the fiscal year, (b) the amounts and objects of the city's expenditures for the same period.
28. What is your city tax rate? Compare with the rates for the last ten years, and prepare a chart showing fluctuations in rates, by years. Compare your municipal tax rate with that of another city in your State which has about the same population.
29. What is the gross debt of your city? Is there a sinking fund? What is the net debt? How is this debt to be paid? What is the borrowing capacity of your city? How near is it at the present time to the debt limit?
30. Make the same comparison with regard to your city's debt as suggested in question 28 for the tax rate.

CHAPTER VI

MUNICIPAL ACTIVITIES

75. Police Administration. Police administration in its broadest meaning includes the entire system of internal administration by which the State regulates the conduct of the citizen. In a narrower sense, the term police denotes the special machinery established for the preservation of order and the detection and punishment of crime. This function is especially important in urban communities because of the concentration of population; and it is usually entrusted to an organized force of men who patrol the streets, together with special magistrates or police judges who deal summarily with petty offenders.

The chief function of the police is to enforce the laws and ordinances. More in detail, their duties are to preserve the public peace (suppressing riots, dispersing dis- ^{Duties} orderly assemblages, and maintaining order at elections and public meetings); to patrol the streets for the special purpose of preventing crimes and misdemeanors (with power to arrest persons without warrant when taken in some criminal act); to protect the rights of persons and property; to inspect places of public amusement; to regulate street traffic so as to prevent blockades; to restrain the crowds which gather at fires, and on other occasions; to care for persons who are injured on the streets; to assist and advise strangers; and in fact, to do all things which relate to the orderly conduct of the city.

76. Control of Police Administration. Control of the police force and final authority in administration is vested either in a single commissioner or in a police board. The

single commissioner system prevails in most of the smaller municipalities of the United States, as well as in such large cities as New York, Chicago, Philadelphia, Boston, and many others. The board system formerly prevailed in nearly all the large cities, and is still found in some of them.

To aid in securing men who are qualified mentally and morally for their responsible office, the civil service principle is applied to the police force in many cities, including those of Massachusetts, New York, and Ohio. Appointments are based upon the results of competitive examinations, and tenure of office is permanent, removal occurring only for specific cause and after a public hearing.

In the United States control of the police has generally been left to the municipal authorities with practically no supervision on the part of the State government. However, the courts have uniformly held that police officers are not private but public or State officers, and that in controlling police the municipalities act merely as agents of the State. Some form of State supervision is justifiable, since the duty to enforce State laws devolves upon the police, and final responsibility for the maintenance of law and order rests upon the State government.

77. Protection from Fire. The nature of city building renders adequate protection from fire one of the most important municipal functions.¹ There is considerable diversity in the organization and equipment of fire departments. Cities under 10,000 still depend almost exclusively upon volunteer companies; those between 10,000 and 30,000 commonly have a small force of regular firemen with a large number of call men; while in cities of over 30,000 the entire force usually consists of regulars. Nearly all municipalities with over 30,000 inhabitants have steam fire-engines, the pumps of the waterworks furnishing the necessary pressure;

¹ The annual loss from fire in the cities of the United States is about \$250,000,000.

and many of them have the most modern type of motorized equipment.

78. Control of Public Health. To control those agencies which threaten the health of its citizens nearly every municipality with over 10,000 population has a locally chosen board of health or health officer; while the larger cities have a force of sanitary inspectors and assistants. The duties of the municipal health department are manifold, but may be classified under three general heads: (1) Precautionary or preventive measures, including regulation of the sale of food products (to prevent unwholesome food or adulterated milk from being offered in the market),¹ regulation of offensive trades, control of the construction of buildings, of ventilation, of smoke consumption, drainage, plumbing, and special supervision over the removal of garbage and waste. (2) Control of cases of infectious disease, by requiring physicians to report all such cases to the health department, and by insisting upon isolation of dangerous cases in city hospitals, and the employment of scientific methods of disinfection. (3) Collection of vital statistics, or statistics of births, marriages, and deaths.

Closely related to the problem of public health is the housing problem. Because of inadequate transportation facilities, there is extreme congestion in our metropolitan cities. In great centers of population like New York and Philadelphia, a thousand people sometimes dwell in a single city block, and there are hundreds of families each living in a single room. This congestion of population in the tenements invites disease, and is a constant menace to the health and morals of the entire city. Hence the question of regulating tenements, and indeed the whole problem of protecting the city's health, becomes a matter of vital public concern.

¹ For example, many cities send their health officers into the country districts adjoining to inspect the dairies and herds from which the city's milk supply is obtained. The milk itself is also inspected from time to time after it reaches the city.

79. Public Education. The administration of public schools is a most important function of city government, and **Board of education** one for which a large portion of municipal revenue is expended. In practically all American cities the central authority in control of schools is the board of education or school board.¹ In some municipalities this board is regarded as one of the several departments of the municipal government; while in others the board of education is a public corporation, separate and distinct from the city corporation. In the former class of cities the board makes a detailed estimate of the funds needed for school purposes during the ensuing year, this estimate being then passed upon by some other municipal authority, generally the city council. In the second class of cities the board itself usually has sole control of taxation for school purposes (provided the levy does not exceed a certain maximum rate fixed by State law); and also has the uncontrolled expenditure of school funds.

The size of the school board varies, the common number being five, seven, or nine. Popular election is the prevailing **size, term and election** method of filling the position, although in some cities the members are chosen by the mayor or council. Election is either by general or district ticket, that is, members are either chosen by the city at large or else from certain districts or wards. The term ranges from two to five years.

In nearly all cities the board of education purchases school sites, erects and maintains school buildings, and furnishes necessary supplies, sometimes even providing free text-books. Other important functions are the employment of a superintendent and teachers, adoption of courses of study, and selection of text-books.

The superintendent chosen as head of the educational administration serves for a term varying from one to six years — generally for two, three, or four years. The powers of

¹ In St. Paul, this authority is vested in the Commissioner of Education.

this officer vary widely in different cities, but the tendency is to give him a large control over the educational side of school administration, including the appointment of teachers and recommendation of text-books and courses of study, generally subject to confirmation by the board of education.

Superintendent of schools

Within recent years free public libraries, one of the most important aids to education, have had a wonderful development. Such libraries are now maintained in nearly all cities whose population exceeds 25,000, as well as in many smaller ones. Administration of municipal libraries is generally in charge of a board of trustees chosen by the mayor or council, or elected by the people.

Public libraries

80. Public Recreation. Generous provision for public parks is of especial importance in the large cities with their congested population; but the need of such areas is strongly felt in the smaller ones as well. At the present time most cities whose population exceeds 40,000 have provided a system of public parks, that is, have purchased and set aside tracts of land for public use and recreation. In some municipalities the parks are connected in a chain by means of boulevards or parkways. Provision is frequently made for outdoor sports and for well-equipped park gymnasiums; and botanical gardens and zoölogical museums are sometimes included.

Parks

Within the last decade there has been a strong movement in favor of municipal playgrounds, which afford an important aid to the physical and moral development of city children. At the present time a large number of our cities provide public playgrounds, equipped with apparatus for games and gymnastics under the charge of competent directors.

Public playgrounds

81. Charities and Poor Relief. In the New England States and in New Jersey, poor relief is a municipal function even in the smallest towns. Elsewhere it is a municipal function in a majority of the larger

Administration

cities; while in the smaller ones (as in the rural districts generally), poor relief is chiefly a county function, although the cities often assist in the work. In the municipalities which carry on public charities, the authority in general charge is either a board of charities (generally unpaid), or a single salaried commissioner.

The chief methods of affording relief are (1) through admission to public almshouses and hospitals; (2) outdoor relief, especially in the form of medical assistance to the sick; (3) municipal grants to private charitable institutions; (4) the maintenance of public employment bureaus through which a systematic effort is made to secure employment for able-bodied persons out of work; (5) the regulation of tenements so as to minimize the evils of the congested residence districts of the great cities.

82. The City Street. The concentration of heavy traffic in municipalities makes the question of streets a most important problem. Then too the social importance of the city street can hardly be overestimated, inasmuch as such municipal activities as waterworks, sewers, lighting and heating systems, and urban transportation are absolutely dependent upon the street for their operation. These conditions seem to justify the statement that "the control of the streets means the control of the city."¹

The principal materials used for street pavements are granite and wooden blocks, bricks, asphalt (sheet and paving blocks), macadam, and gravel. No single material is best in all respects, and ordinarily the choice will be largely influenced by the question of cost. In his work on "Municipal Administration," Mr. W. B. Munro has summarized the merits of the different paving materials in the following table:—

¹ Wilcox, D. F., *The American City*, p. 29.



A VIEW IN CENTRAL PARK, NEW YORK CITY

The park is over $2\frac{1}{2}$ miles long, and over half a mile wide. It covers 843 acres, of which 185 are in lakes and reservoirs and 400 in forest, wherein over half a million trees and shrubs have been planted. There are 9 miles of roads, $5\frac{1}{2}$ of bridle paths, and 31 of walks.



WILLIAM H. SEWARD PARK, NEW YORK CITY

The Girls' Playground. The park provides also grounds for the use of boys.



A PUBLIC BATH FOR BOYS, BOSTON

On the bank may be seen a part of the park and playgrounds.



(By courtesy of the Playground Association of America)

FIELD HOUSE AT SOUTH PARK, CHICAGO

In addition to playgrounds, out-door gymnasiums, and other recreation facilities, the Chicago parks provide indoor gyms in which organized work is carried on through the winter. The Field Houses contain also assembly rooms and libraries.

Economy in construction	Economy in repair	Durability	Cleanliness	Noiselessness	Safety
1st Macadam	Granite	Granite	Asphalt	Wood	Granite
2d Asphalt	Brick	Wood	Brick	Macadam	Macadam
3d Brick	Wood	Brick	Wood	Brick	Brick
4th Wood	Asphalt	Asphalt	Granite	Asphalt	Wood
5th Granite	Macadam	Macadam	Macadam	Granite	Asphalt

83. Street-Cleaning and Sewerage Systems. In most cities with over 30,000 population, a considerable portion of the streets is swept at public expense, and a force of men is employed to remove garbage and other refuse. The primitive method of removing garbage was to dump it upon adjacent land or in a near-by stream. With the rapid increase in urban population, a more scientific disposal of waste became imperative, and many cities now employ garbage furnaces or cremators.

The first cost of constructing sewer systems, as in case of grading and paving streets, is usually borne by the abutting property-owners. The work is ordinarily done Sewer systems under the supervision of the municipality by the contractor making the lowest bid, and the cost collected from the property-owners by special assessments. In some cities part of the original expense of these improvements is paid out of the general fund. The cost of maintaining both streets and sewers is generally borne by the city.

84. City Planning. The street lines of those American cities which have been systematically laid out have ordinarily followed the rectangular plan, the streets Our best type crossing each other at right angles. In some cases this plan has been greatly improved by means of diagonal streets radiating from the center of the city, together with sub-radiations from local centers. The best arranged city in America, if not in the world, is Washington, planned by a French engineer, L'Enfant, in 1791. The streets range from eighty to one hundred and sixty feet in width, and broad transverse avenues intersect the rectangular streets.

City Plan-
ning Com-
misions But in most of our cities there has been no systematic plan for the laying out of streets, or for the grouping of the various public buildings. The failure to make adequate provision for wide business streets and boulevards, and to reserve land for public buildings, often necessitates reconstructing certain portions of the city at a great expense to the taxpayers. One of the most promising reforms of recent years has been the creation of City Planning Commissions, which endeavor to work out comprehensive plans for the development of cities. For example, city planning includes the development of a boulevard system, the establishment of zones for industrial, business, and residential districts, and the grouping of municipal buildings in a civic center.

85. Water Supply. No function is of more vital concern to the modern city than that of furnishing its inhabitants **Importance** with an abundant supply of water free from the specific germs of disease, and fit in every way for domestic and industrial uses. With the concentration of population, the difficulty of obtaining an adequate water supply increases, and the danger of contamination becomes greater. The chief sources of supply are the great lakes of the St. Lawrence system, flowing rivers, lakes among mountains and hills, and artesian wells supplemented by storage reservoirs.

Water is supplied by the municipality in most of the large cities of the United States, as well as in many smaller **Municipal** **ownership** ones. Of 175 municipalities with over 25,000 population, 133 own their waterworks; and it is now the almost universal practice for the smaller cities, in constructing waterworks, to adopt municipal ownership. The expense of conducting the water department is not paid out of taxes, but from rates or charges levied against users of the water.

86. Public Lighting. In the United States gas-works and electric-lighting plants are generally owned and operated

by private companies, although the tendency is toward municipal ownership, especially in the smaller cities. Out of a total of about five thousand lighting-plants in all cities, 70 per cent are owned and operated by private companies, while 30 per cent are municipal plants. Most of the municipal electric-lighting plants are in the central group of States, and generally these are found in the smaller municipalities; but a number of important cities including Chicago, Allegheny, Detroit, and Grand Rapids, own their plants.

Municipal
and private
plants

87. Street Railways. Our first street railways were constructed about the middle of the nineteenth century; and the striking growth of urban population in the following decades has made the question of urban transportation one of increasing importance.

Early
and recent
franchises

From the first the construction and operation of street railways has been in the hands of private companies under franchises granted by the city council. Early franchises were for long periods, commonly fifty to one hundred years,¹ and generally imposed no restrictions upon the company except that of paving the street surface between the tracks. Gradually cities came to realize that franchises have a monetary value, and that they should be granted only under conditions which will safeguard the interests of the public. Recent franchises are often limited to a term of twenty years, and provision is sometimes made for payment to the city either of a stated sum, or a certain percentage of the gross receipts. Other common franchise conditions establish a maximum fare (generally three to five cents), provide for universal transfers and improvement of the service, and reserve to the municipality the right to purchase the system.

88. The Problem of Municipal Monopolies. Writers on economics agree that in industries which are natural monopolies (waterworks, gas and electric lighting-plants, street-railway and telephone

Relation
of city to
natural
monopolies

¹ In a number of cities perpetual franchises were granted.

systems), permanent competition is impossible; but great diversity of opinion prevails as to the public policy that should be followed with reference to these undertakings. The following courses are open to the municipality in dealing with natural monopolies:—

(1) The city may authorize a private company to perform the service in question by granting a franchise without making any effort to safeguard public rights or to secure an adequate return for the privileges conferred — a common policy in the earlier period of municipal history.

(2) The municipality may grant franchises to private companies under conditions designed to protect the public interest. This is now the common plan for street-railway and telephone systems, and is often followed in the case of lighting-plants. The principles that should govern the granting of franchises have been summarized by an eminent writer¹ as follows:—

(a) Reservation to the municipality of power to determine the charges of public-service corporations.

(b) Public control of capitalization and public supervision of corporation accounting.

(c) Limitation of franchise terms to a period ranging from twenty-five to forty years.

(d) Compensation to the municipality exacted in the form of lower charges rather than large financial returns.

(e) At the expiration of the franchise, the plant at its appraised value to revert to the city.

(3) The city may reserve to itself the ownership of the plant, while authorizing private operation. For example, the waterworks of Denver are owned by the city but leased to a private company; and the same plan is followed in case of the Philadelphia gas-plant, and the New York and Boston subways.

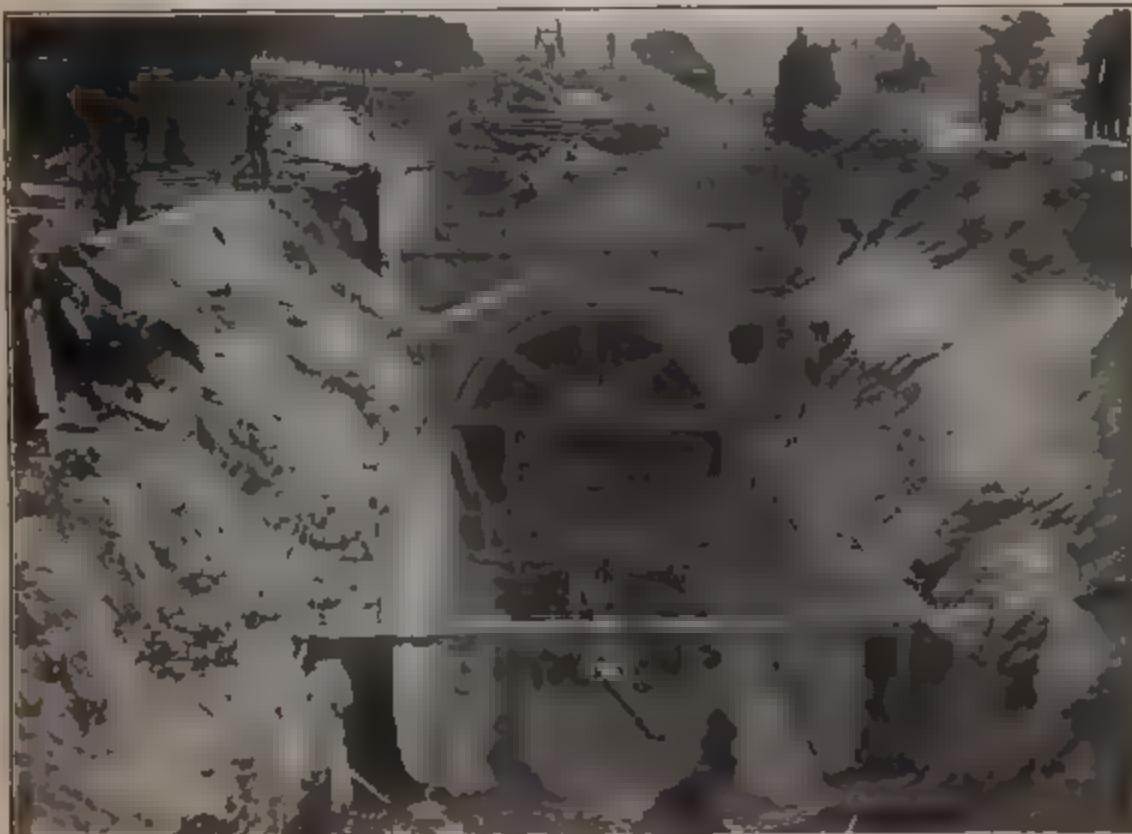
(4) Municipal ownership and operation of local public utilities is urged by many as a remedy for the evils attendant upon our present franchise system.

¹ Howe, L. S., *Problems of City Government*, p. 230.

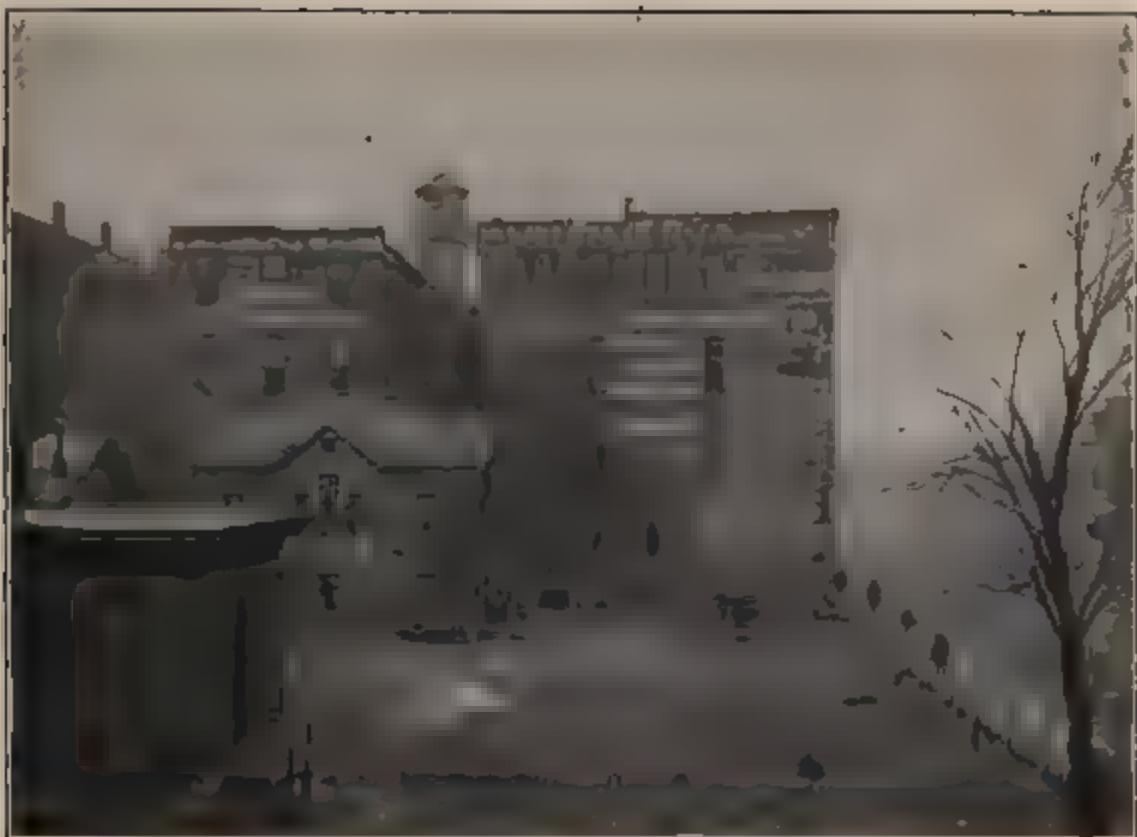


By courtesy of the Metropolitan Water and Sewerage Board

A pumping-station of the Metropolitan Water Works at the Chestnut Hill Reservoir, Boston, Mass. The building contains four pumping-engines whose combined capacity is 115,000,000 gallons of water daily. Eighteen different cities and towns are served by the system of which this is a part.



A section of the Stony Brook Conduit, Boston, Mass., while under construction. This conduit is about $\frac{3}{4}$ miles in length, and drains an area of about 50 square miles formerly subject to inundation from the overflowing of Stony Brook and its tributaries. The conduit provides an underground channel for this stream through which the water is conducted into the Charles River.



TWO VIEWS OF THE SAME SCHOOL-YARD IN CLEVELAND, OHIO

The upper shows the unsightliness resulting from neglect, the lower, the effect of making the yard into a school-garden.

89. Arguments for Municipal Ownership. The chief arguments in favor of municipal ownership are:—

(1) Public ownership eliminates one of the greatest evils in municipal government — the corruption of officials by private corporations desiring to secure franchises or other privileges. On this point Professor Ely says: "Our terrible corruption in cities dates from the rise of private corporations in control of natural monopolies, and when we abolish them we do away with the chief cause of corruption."

(2) Public ownership gives a fuller and more efficient service, securing the enlargement and extension of facilities as public needs may require. Private companies supply only those services which pay, public ownership those which are needed.

(3) Public ownership lowers rates to the community, since the public plant does not have to pay dividends on watered stock, or maintain a lobby or corruption fund, or buy out rival plants, or advertise or solicit business.

(4) Public ownership secures impartial treatment for all consumers, eliminating secret rebates and other forms of discrimination.

(5) Better treatment of labor is claimed for public ownership, as well as the elimination of strikes and lockouts.

(6) Public ownership aids civil service reform, since it necessitates the merit system in municipal administration.

(7) The spirit of cooperation is promoted and civic interest encouraged, thereby fostering better citizenship.

(8) Public ownership tends to a diffusion of wealth, whereas private ownership of natural monopolies tends to concentrate wealth in the hands of a few.

90. Arguments against Municipal Ownership. The principal arguments against municipal ownership are as follows:—

(1) The present corruption and inefficiency of our city governments would be greatly increased by enlarging the number of positions which would become the spoils of the successful political party.

(2) Public ownership is non-progressive, and would not expand facilities as rapidly as private ownership, which secures large investments of capital through the inducement of large financial returns. Compare in this respect the state-owned railroads of Europe with the private-owned roads of the United States.

(3) Public ownership would not lower rates, as public management is generally less efficient and economical than private management. The history of the Philadelphia gas-plant under municipal and under private operation is cited in proof of this claim.

(4) Public ownership would increase enormously the bonded indebtedness of the municipalities, since the private plants would have to be purchased or new municipal plants erected.

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QUESTIONS AND EXERCISES

1. Is authority over police administration in your city vested in a single individual, or in a board of commissioners? Does the State government exercise any direct control in police affairs?
2. Describe the organization of the fire department in your city. How many firemen are employed? What was the cost of police and fire protection in your city last year?

3. Are the police and fire departments under civil service rules? Give arguments in favor of this plan.
4. Is your municipal health department under the control of a board, or a single commissioner? Describe the duties and work of this department.
5. How many members on your board of education? Are they chosen from wards, districts, or at large? What are their terms? Their powers?
6. Name the principal officers of your board of education, and describe their duties.
7. How many school buildings in your city? How are the teachers chosen? Does your board provide free textbooks? Give arguments for and against this plan.
8. What was the cost of public education in your city last year? What per cent of the entire municipal revenues was expended for school purposes?
9. How many pupils were enrolled in your public schools last year? In the elementary department? In the high school? How many graduated from high school last year? What per cent of those who enter the first grade complete the high-school course? Why do so large a number of those who enter school fail to complete the course?
10. Does your city have a free public library? What authority controls it? How many volumes in the library?
11. Describe your public park system, stating what authority is in control, and annual cost of maintenance. Name, locate, and give the areas of the principal parks. Are they well located and managed?
12. Does your city maintain public playgrounds for children? Does it provide municipal baths?
13. How is poor relief administered in your community? What was the cost last year? In what way is poor relief given?
14. Is the cost of street paving paid out of the general fund, assessed upon property-owners, or is a combination of the two methods employed? Are your streets well paved? What materials are chiefly employed? Are the streets kept clean and in good repair? Cost of maintenance last year?
15. Is your water supply under municipal or private control? If the latter, name the authority in charge. How is the cost met? Describe the supply system and the distributing system.
16. Are your streets lighted by gas or by electricity? Is the plant under public or private control?
17. Give arguments for and against municipal ownership of waterworks and lighting-plants.
18. When was the franchise granted under which your street railway operates? When does it expire? What are its provisions respecting rates of fare, transfers, and paving between tracks? May the rates of fare be modified during the term of the franchise? Does the company pay the city an annual sum for the use of the streets?
19. In awarding a street-railway franchise, should a city aim to secure a large financial return from the company, or should compensation to the community take the form of lower fares to passengers? Why?
20. Give arguments for and against municipal ownership of street railways.

CHAPTER VII

ORIGIN OF STATE GOVERNMENTS

91. The Establishment of Colonies. All of the original thirteen States with the exception of Georgia were established as colonies during the seventeenth century
Colonial charters

The early English method of colonization was to grant charters to commercial companies patterned after the famous East India Company. The most notable charters were those of the London and Plymouth Companies under which the colonies of Virginia and Plymouth were established. The charters generally named the individuals to whom the grant was made, defined in somewhat vague terms the territorial limits of the colony, and provided a framework of government. Ordinarily the granting of the charter preceded actual settlement; but Rhode Island and Connecticut — founded by emigrants from other colonies — did not receive charters until after the settlements had been made.

92. Classification of Colonial Governments. With reference to their internal organization and their relation to Great Britain, the American colonies may be classified as first, royal provinces; and second, chartered colonies, including the proprietary and corporate types. The chartered colonies were governed under charters from the British crown which granted them substantial rights of self-government; while in the royal provinces the governor's commission and instructions, and the laws of England so far as applicable, took the place of a charter. In the chartered colonies the absence of a royal governor made imperial control correspondingly weaker; and hence it was the policy of the British government to

Royal provinces and
chartered colonies

transform chartered colonies into royal provinces whose executive and judiciary should act directly under authority of the king. Throughout the greater part of the seventeenth century the chartered colony was the prevailing type;¹ but ultimately a majority of these became royal provinces.

During the half-century immediately preceding the American Revolution, seven of the colonies were royal provinces, namely, New Hampshire, New York, New Jersey, ^{Royal} Virginia, North Carolina, South Carolina, and ^{colonies} Georgia. In these colonies the governor and executive council were appointed by the crown.

The proprietary governments included Maryland, Pennsylvania, and Delaware. In these colonies some favored individual or family — that of Lord Baltimore in ^{Proprietary} Maryland and of William Penn in the other two ^{colonies} — exercised the prerogatives which belonged to the crown in the royal provinces.² But in both proprietary and royal colonies the government was subject to a considerable degree of popular control through representative assemblies whose powers waxed greater from year to year.

Rhode Island, Connecticut, and Massachusetts were corporate colonies possessing charters which granted them a large degree of independence. In fact, "the corporate colonies of New England were practically commonwealths and developed with scarcely any recognition of the sovereignty of England."³ In Connecticut and Rhode Island the people chose the governor and the executive council, as well as the popular assembly. Under the charter of 1629, Massachusetts had similar powers; but the charter of 1691 established a government which was a compromise between the royal and corporate types.

93. Common Characteristics of the Colonies. Notwith-

¹ Until 1694 only two colonies, Virginia and New Hampshire, were definitely organized as royal provinces.

² The proprietary colony was "a miniature kingdom of a semi-feudal type and the proprietor was a petty king." — Osgood, H. L., *The American Colonies in the Seventeenth Century*.

³ Osgood, H. L., *The American Colonies in the Seventeenth Century*, Introduction, p. 98.

standing these differences in governmental organization, the colonies possessed many attributes in common. First, all the colonies were dependencies of the British crown. Second, the colonists enjoyed the rights of British-born subjects, and claimed the benefit of the common law of England as modified to meet the more democratic conditions of the new world. Third, local legislatures everywhere existed, the lower houses of which were chosen by popular suffrage; and these claimed a constantly increasing share in the affairs of government. Fourth, all of the colonies had a system of local self-government patterned more or less closely after English institutions. Finally, nearly all of the colonies had been granted charters during the early part of their history, and had thus grown accustomed to a fundamental law establishing a framework of government; and these charters eventually developed into the written constitutions now common to all the States.

94. The Colonial Legislature. The colonial legislature ordinarily consisted of two houses.¹ The upper branch was ~~composition~~ the governor's council appointed by the crown or ~~and powers~~ the governor (except in the corporate colonies). This council had a three-fold character, since it was an administrative body, a high court, and a branch of the legislature. The lower house or assembly consisted of representatives generally chosen for a term of one year.² At first the representatives sat in joint session with the governor and his council; but gradually the assembly gained the right to sit apart from the council, and thus became a distinct and independent body, with the right to vote separately upon all legislation. The constitutional history of the colonies is marked by a series of contests between the governors and assemblies, especially over questions of taxation and expenditure. At the outbreak of the Revolution (1775), the assemblies had established their right, shared with the council, to

¹ Except in Pennsylvania, Delaware, and Georgia.

² The first representative assembly in America met in Virginia in 1619, only twelve years after the founding of the colony.

initiate legislation; and through their power to vote taxes, they had a considerable check upon the executive.

95. The Colonial Governor. The powers of the colonial governor were large, especially in the early period of colonial history and in the royal colonies.¹ The royal ^{Powers} governor acted under direct commission from the crown, and had large powers of administration, including the appointment of judges and nearly all other officials. Moreover, in the royal and proprietary colonies the governor controlled the upper house or council, and had at all times an absolute veto upon measures passed by the legislature. In addition to the governor's veto power, the British crown reserved the right to disapprove any colonial legislation — a prerogative from which only Connecticut and Rhode Island were exempt.

96. Relations with Great Britain to 1760. England's colonial policy down to the Revolution of 1688 was in general a *laissez-faire* (let-alone) policy, the colonists being left to work out their own salvation. Colonization was largely in ^{Early colonial policy} the hands of private individuals, associations, or corporations, acting under authority of royal charters or simply by sufferance of the crown. Governmental authority was distributed among a number of separate colonies — of which there were twelve in 1684; and over these Parliament exercised only the slightest control. The territories in America were regarded as the domain of the crown, and not until the time of the Commonwealth (1642-1680) did Parliament concern itself actively with colonial affairs.

The period from 1688 to 1715 was marked by an increased interest in colonial affairs owing to Great Britain's desire to utilize the resources of the colonies in the development of her own national power. By the navigation acts of the Commonwealth and Restoration governments, Parliament undertook to regulate colonial commerce and industry in accordance with prevalent mercantile theories. Since the existing colonial governments could not be relied upon to enforce the acts of navigation and trade, new administrative machinery had to be

¹ The royal governor enjoyed such high prerogatives in colonial times that the first State constitution-makers, having learned by experience to fear executive authority, usually provided for the supremacy of the legislature and gave their governors very little power." — Beard, C. A., *American Government and Politics*, p. 5.

devised. Accordingly the acts of 1696 established the Board of Trade and provided new customs officials and admiralty courts. The attempt begun by James II to vacate the charters of the proprietary and corporate colonies was followed up with a large measure of success; and by the close of 1691 the number of royal governments had been increased from two to five. In general, therefore, this period was one of closer imperial control.

Then came a change. The years from 1715 to 1740 are known as the period of "salutary neglect" under Walpole, during which

Period of salutary neglect the colonies were improving their opportunities to develop along their own lines, and were preparing to assume an attitude of independence and later of defiance.

For the most part the colonists were left to govern themselves; and accordingly they levied their own taxes, legislated on questions of personal and property rights, and in general prospered through Great Britain's neglect.

The period from 1740 to 1760 was one of war, and naturally the chief interest in colonial affairs was from a military point of view.

Period of colonial wars It was necessary to defend the colonies and at the same time to attack the French in the St. Lawrence and

Mississippi valleys. The colonies, especially those south of New York, seemed lukewarm in supporting the British troops; and hence the home government favored plans for colonial cooperation in military affairs, a policy which culminated in the Albany Congress.

97. Policy of Imperialism. At length, when George III succeeded to the throne of Great Britain (1760), a vigorous colonial

Policy of George III policy was inaugurated. This monarch sought to rule as well as reign; and his policy for the time arrested political progress in Great Britain, and eventually

brought on the American Revolution. After years of laxity toward the colonies, the British government determined to carry out a policy of imperialism,—that is, determined to unify the Empire by asserting the authority of Parliament throughout British domains. The colonial governors and judges were to be made independent of the assemblies; colonial trade regulations were to be vigorously enforced; and regular troops were to be stationed in America and supported in part by colonial taxes.

The progressive imperial policy was doomed to failure not only because its execution was entrusted to such tactless ministers as Grenville and Townshend, but also because the long years of self-government had made the colonists independent in spirit and resolutely opposed to

surrendering any privileges of self-government. With regard to their relations to Great Britain the colonists made a distinction between allegiance to the crown and subjection to Parliament: the former was conceded, the latter denied. While the authority of Parliament was not utterly repudiated, the colonists insisted that a distinction must be made between general acts of Parliament for the purpose of regulating trade and commerce throughout the entire Empire, and acts which directly imposed taxes upon the colonies. The power of Parliament to regulate navigation and trade by general acts was admitted during the early part of the dispute; but internal taxes the colonists declared could be lawfully levied only by the colonial assemblies.

Shortly after the close of the French and Indian War, Parliament asserted its right to tax the colonies for the support of the Empire, and even declared its power to legislate for the colonies "in all cases whatsoever." The crown, it was claimed, ^{The British theory} could grant no charters exempting the colonies from the supreme legislative authority of Parliament, which prevailed wherever the sovereignty of the crown extended. Hence the colonists in their new home owed the same subjection and allegiance to the supreme power as if they resided in England. Parliament's legislative power over the colonies was therefore supreme and complete, including the power of taxation as well as of general legislation.

98. The Dispute over Representation. The colonists claimed exemption from the general authority of Parliament by virtue of the British constitution itself.¹ English doctrine running back to Magna Carta (1215) declared that taxes ^{Taxation and representation} could be levied only with the consent of the people given through their representatives; and hence Parliament had no authority to levy a direct tax upon the colonists, since they were not represented in that body. In answer to this it was contended that "virtual representation" satisfied the meaning of the British constitution; and in that sense the colonists were represented in Parliament. Much of the bitter controversy that followed arose from the conflicting views of America and Great Britain as to what constituted representation.

In the colonies there had long been a distinct territorial basis for representation; thus in New England the towns, and elsewhere generally the counties, sent representatives to the colonial assemblies. Moreover, residence within the particular district was com-

¹ Also by virtue of their colonial charters and the "Immutable laws of human nature." — Declaration of Continental Congress of 1774.

monly required for both voters and representatives. Hence the American theory of representation meant to the colonist that no taxes should be levied except by a legislative body in which was seated a member from his district chosen by its voters.

In Great Britain a very different view of representation prevailed. In that country for many years no attempt had been made to apportion representation according to population.¹

Representation in Great Britain. As a result ancient boroughs like Tavistock or Old Sarum with less than a dozen inhabitants continued to send one or two members to Parliament; while such flourishing cities as Birmingham, Leeds, Manchester, and Liverpool had no representatives at all. Three hundred and seventy-one members, or more than half of the House of Commons, were chosen by one hundred and seventy-seven persons. Notwithstanding this condition, all Englishmen were held to be virtually represented in the House of Commons, since in theory each member of that body represents not a single borough only, but all parts of the Empire.²

Hence the British government claimed that the colonists like other Englishmen were virtually represented in the House of Commons; and if they did not directly participate in the election of its members, they were at least no worse off in that respect than the great body of Englishmen at home. The American answer to this argument was, that in England the non-electors were under no personal incapacity to vote and might acquire the franchise, while the colonists could not. Further, in England the interests of the electors were inseparably connected with those of the non-electors, and a statute oppressive to one class would also be oppressive to the other; but the colonists had no such safeguard, for acts oppressive to them might be popular with the English electors.

99. The Mercantile Colonial System. Underlying the political causes of the Revolution—disputes over royal prerogative and questions of parliamentary and colonial rights—was a fundamental economic cause, the colonial system. European powers including Great Britain looked upon their colonies as settlements made in distant parts of the world for the purpose of increasing the wealth of the colonizing country. Colonies were to furnish a market for the production of raw materials which the mother country wanted to buy, and for

¹ No new Parliamentary boroughs had been created since the Restoration (1660).

² English custom has never required that a member of Commons should be a resident of the district which elects him.

the consumption of manufactured products which the mother country wished to sell.

In accordance with these doctrines, Great Britain passed a series of acts relating to navigation and trade which were designed to exploit the colonies in the interests of English merchants and manufacturers. These consisted of (1) acts of navigation intended to protect English shippers against foreign competition; (2) acts of trade designed to secure to English merchants a monopoly of colonial commerce; (3) acts giving to English manufacturers a monopoly of the colonial market.

Although for many years the laws of trade were systematically evaded, this system of economic paternalism was a source of irritation and discontent to the robust people living three thousand miles away from the seat of power. At length, at the close of the French and Indian War (1763), the British ministry under Grenville's leadership determined to enforce the acts of navigation and trade in order to help defray the expenses of the war. Accordingly orders were sent to the American custom houses and the British war-vessels on the coast to use every effort to prevent smuggling. The rigorous enforcement of these acts threatened the commercial prosperity of the colonies; and the real issue between them and Great Britain became one of home rule — whether the colonies were to be allowed to map out their own destinies, or whether they were to be held in permanent tutelage to the British government. Economic freedom or dependence was thus the fundamental issue. In the words of Bancroft: "American independence, like the great rivers of the country, had many sources; but the head spring which colored all the streams was the Navigation Act."

100. Resistance to Great Britain. The Stamp Act passed by the British Parliament in 1765 marked a crisis in the dispute between the colonies and Great Britain. As internal taxes the stamp duties were especially obnoxious to the colonists, and in consequence of the universal resistance to the measure it was repealed in 1766; but another act passed at the same time asserted Parliament's power to legislate for the colonies "in all cases whatsoever."

Shortly after the repeal of the Stamp Act, the British government under Townshend's leadership determined to try again to tax the colonies for imperial purposes. This time Great Britain endeavored to meet the colonists upon their own ground by discriminating between internal and external taxation. Accordingly the Townshend Acts (1767) levied

duties upon certain imported articles,¹ and were thus external taxes as defined by the colonists themselves. The proceeds were to be used to pay the salaries of the governors and judges, thus rendering them independent of the contentious assemblies.² Writs of assistance were legalized, and the collection of the duties was further aided by the establishment of admiralty courts which should try revenue cases without a jury, thus preventing popular sympathy from shielding violators of the law.

Popular resistance to the Townshend Acts was immediate and widespread. The colonists now abandoned their distinction be-

Attitude of colonists tween internal and external taxation, and denied entirely the power of Parliament to tax the colonies. The

right of trial by jury was declared inalienable, popular control of the executive and judiciary was demanded as necessary to free government, and writs of assistance were denounced as illegal. Owing to this vigorous resistance the issue was sharply drawn whether Great Britain had the right to tax her colonies. The British government feared that to surrender the principle of taxation would be to abandon the policy of imperial control. At length Parliament repealed all the Townshend Acts except the tax on tea, thus removing everything but the offense, — "fixing the badge of slavery upon the Americans without service to their masters."³

From this time on, the chain of events in colonial history consists of a series of links leading to open rebellion. Non-importation

Possible resistance agreements, the so-called Boston massacre (1770), the burning of the Gaspée (1772), and the Boston Tea

Party (1773), showed the resolute attitude of the colonists. Great Britain, equally determined, replied in 1774 with the five "intolerable acts," and the die was irrevocably cast. Boston's port was to be closed until the town should pay for the tea. The charter of Massachusetts was annulled, its executive and judicial officers placed under royal control, its town-meetings deprived of nearly all powers of local government. The governor was empowered to send to Great Britain for trial any persons indicted for crimes committed in the suppression of riots or enforcement of the revenue laws. These three statutes constituted the coercive system; and to aid in their enforcement, a fourth act legalized the quartering of troops upon the inhabitants. Finally, the fifth act of

¹ Including glass, lead, painters' colors, paper, and tea.

² "The purposes for which the revenue was to be used showed clearly that the object of this legislation was not to regulate trade, but to assert British supremacy over the colonies at the expense of their political freedom." — *Fiske, John, The American Revolution*, I, 31.

³ *Juxon* (ed. of 1790), II, 31.

the series granted religious freedom to the people of Quebec, and extended the boundaries of that province southward to the Ohio River in defiance of the territorial claims of Massachusetts, Connecticut, New York, and Virginia. This extensive region was to be governed by a viceroy with despotic power; and colonists who came to live there were to have neither popular meetings, nor *habeas corpus*, nor freedom of the press.¹

To these repressive acts Massachusetts could make but one answer — forcible resistance or absolute submission. Within two days after a copy of the port bill reached Boston, the Massachusetts committees of correspondence addressed The appeal
to arms the committees in all the colonies, recommending non-intercourse with Great Britain. When Governor Gage with four regiments sought to enforce the punishment meted out to Boston, sympathy and fear furnished the hitherto lacking bond of union among the colonies. The Virginia house of burgesses, dissolved by Governor Dunmore, recommended (May 27, 1774) an annual Congress of all the colonies "to deliberate on those general measures which the united interest of America may from time to time require." Accordingly, the first Continental Congress assembled at Philadelphia in September, 1774. After several weeks of discussion, this body adopted a Declaration of Rights and Grievances, and an agreement or "Association" pledging the colonies to suspend trade with Great Britain until redress should be obtained.² But the period of discussion was rapidly nearing a close, and throughout the continent preparations were being made for forcible resistance. Within a few months came the appeal to arms. Actual hostilities were precipitated by Gage's efforts to destroy the military stores at Concord (April 19, 1775); and the fight at Lexington and Concord marked the beginning of the Revolution.

101. Declaration of Independence. Redress of grievances rather than independence was the aim for which the American patriots took up arms in 1775; but by January of the following year it had become evident that there could Growth of
spirit of in-
dependence be no middle course between complete separation or absolute submission. The growth of a spirit of independence had been greatly increased by the action of the British government in employing the Hessians, and also by the appearance, early in 1776, of Paine's "Common Sense," a widely circulated pamphlet urging separation from the mother country. Beginning with the Mecklen-

¹ See the *Declaration of Independence* wherein the Quebec Act is cited as one of the grievances.

² The "Association" was effectually supported by committees of inspection throughout the country.

burg Resolutions of May, 1775, towns, counties, and colonial legislatures sent memorials to Congress asking that independence be declared. By May 15, 1776, the sentiment in favor of independence was so strong that Congress passed a resolution recommending to the colonies the formation of State governments, and declaring that the exercise of all authority under the crown of Great Britain should be totally suppressed.

On June 7, 1776, Richard Henry Lee, of Virginia, moved the adoption of a formal declaration of independence; and a few days later a committee was appointed consisting of Jefferson, John Adams, Franklin, Sherman, and Livingston, to draw up such a declaration. The draft was written by Thomas Jefferson, and on July 1 the committee made its report, which was formally adopted July 4.

The Declaration really consists of three parts: the first contains an exposition of political philosophy, based largely upon John Locke's great "Essay on Government"; next follows an enumeration of grievances, twenty-nine in number, put forward as the justification for separation; and the third part consists of the declaration that the united colonies are free and independent States. The adoption of the Declaration marks the birth of a new nation, and the colonies thereupon assumed the title of the United States of America.

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QUESTIONS AND EXERCISES

1. Point out the analogy between the colonial charters and our State constitutions.
2. State facts tending to justify the statement that the colonial governor was a reduced copy of the British king.
3. Prepare a report upon the mercantile colonial system.
4. Describe the transition from colonial to State governments. (Bryce, James, *The American Commonwealth*, I, ch. XXXVII.)
5. Contrast the American and British theories of representation during the eighteenth century.
6. When was the British Parliament reformed and made really representative? Effects of this measure?
7. Explain the difference between a revolution and a rebellion. Give instances of each in British and American history.
8. State and discuss the principal causes of the American Revolution.
9. Name the principal grievances enumerated in the Declaration of Independence.
10. Compare the declarations of rights of 1765 and 1774 with the Declaration of Independence, showing the growth of the spirit of self-government.
11. Is taxation without representation always tyranny? Have we any instances now of taxation without representation?
12. What were the chief political effects of the Declaration of Independence?
13. What was the effect of the American Revolution upon British politics? Upon the political situation in France?
14. Compare our Revolution with the French Revolution as to causes, character, and results.

CHAPTER VIII

STATE CONSTITUTIONS

102. Early State Constitutions. New Hampshire,¹ South Carolina, Virginia, and New Jersey adopted State constitutions before independence was declared; and by *Motion* 1780 all the States except two had followed their example. The two exceptions were Connecticut and Rhode Island, whose ancient charters were so liberal that with slight changes they served for many years as State constitutions.² Of these eleven early constitutions, only that of Massachusetts was submitted to popular vote for ratification, a practice now almost invariable; but the conventions and congresses which framed the others acted in a representative capacity.

The great significance of the Revolutionary constitutions lies in the fact that for the first time in history the people *Significance* had ordained written constitutions superior to and limiting the government, and alterable only by the people themselves.³ The leading features of these constitutions were undoubtedly suggested by the colonial charters, which were modified to meet the new conditions created by the Revolution.

103. Parts of the State Constitutions. The early State *Early con-* constitutions ordinarily consisted of two parts: *stitutions* first, the bill of rights, an enumeration of the civil and political rights of the individual; and second, an outline

¹ On January 5, 1776, New Hampshire adopted the first State constitution formed by the people.

² Connecticut adopted a new constitution in 1818, Rhode Island in 1842.

³ A State constitution has been defined by Bryce as "a comprehensive fundamental law, or rather group of laws included in one instrument, which has been directly enacted by the people of the State, and is capable of being repealed or altered, not by their representatives, but by themselves alone." — *The American Commonwealth*, I, p. 487.

of the general framework of government, providing for executive, legislative, and judicial departments, and prescribing the qualifications for the suffrage.

In addition to the foregoing, modern constitutions commonly contain a large number of miscellaneous provisions relating to finance, education, corporations, taxation, and public institutions. The method of ^{Modern constitutions} constitutional amendment is also prescribed; and sometimes a schedule is added providing for the method of ratification, and for the transition from the previous constitution to the new one.

104. Bills of Rights. Seven of the original thirteen States inserted in their first constitutions a declaration of the fundamental rights of the individual, and their ^{origin} example has since been generally followed. These declarations are the legitimate successors of such great English bills of rights as Magna Carta (1215), Petition of Right (1628), and the Bill of Rights (1688); and they also reaffirm the principles of the American declarations of rights as avowed by the Stamp Act Congress (1765), the first Continental Congress (1774), and finally the Declaration of Independence (1776).¹

The bill of rights commonly affirms the general principles of republican government, that all powers are inherent in the people and all free government formed by their ^{Provisions} authority; that elections shall be free and equal; and that the laws shall not be suspended except by the legislative assembly. Generally the fundamental rights of the individual are also asserted — that all men have certain inalienable rights, including those of enjoying and defending liberty, and acquiring and possessing property. Other important safeguards against oppression or injustice are often added, including guaranties of the right of free speech, trial

¹ "The colonists had in vain contended that an act of Parliament against Magna Charta was void, and they therefore were explicit in defining the rights of the people which their own governments must not invade." — Landen, J. S., *The Constitutional History and Government of the United States*, p. 60.

by jury, the free exercise of religious worship, and the right peaceably to assemble and petition the government for redress of grievances.¹

105. Early State Legislatures. The legislature constituted the most prominent feature of the early State government, and its authority was unrestricted except by ^{Authority} the bill of rights. Notwithstanding this large power, the duties of the early legislature were few, since the simple agricultural life of the eighteenth century involved few of the problems which confront the modern industrial State.

Composition With the exception of Georgia and Pennsylvania, all legislatures consisted of two branches, a lower and an upper house, each designed to act as a check upon the other. Members of the lower house were everywhere chosen for a term of one year; while in a few commonwealths the members of the upper house were elected biennially.

106. The State Executive. Protracted contests with the royal governors had inspired the colonists with a profound distrust of executive power; and this feeling is reflected in numerous provisions of the early constitutions. The short term, the limited authority, and the ineligibility of the governor to succeed himself in office were intended to prevent any danger of executive tyranny. The governor had the military powers formerly exercised by his colonial predecessor, but in most States he could not veto a bill,² or grant a pardon, or make appointments except to minor military and judicial offices. In several commonwealths the governor's power was further restricted by means of an executive council modeled partly after the British Privy Council and partly after the colonial executive council. In five States the governor was chosen by the people, in the others by the legislature.

¹ For a typical bill of rights, see article 1 of the constitution of New York.

² The Massachusetts constitution of 1780 set the precedent for future practice by conferring a limited veto which the legislature might overrule by a two-thirds vote.

107. **The Judiciary.** The judicial power was vested in courts whose judges were either appointed by the executive or elected by the legislature. Good behavior was the judicial term originally adopted by a majority of the States. Of the three departments of government the judiciary was least affected by the Revolution. The principal change was the separation of legislative and judicial functions, the legislatures being deprived of any judicial powers formerly exercised. Another reform consisted in defining more accurately the jurisdiction of the various courts.

108. **Checks and Balances.** The governmental checks and balances which formed a prominent feature of the early constitutions have been retained and elaborated in more recent ones. The most important of these is the separation of the executive, legislative, and judicial powers¹ by the creation of distinct departments for the exercise of each power. Upon legislative action there is now (although not in early constitutions) the check of the executive veto; upon the executive and judiciary the legislature has a restraint through the power of impeachment; and finally, the judiciary constitutes a check upon both legislature and executive, since it may declare legislation unconstitutional, and may restrain executive agents from acts in excess of their authority.

The second great principle included under the term "checks and balances" is that of division of powers between the State and federal government on the one hand, and between the State and local government on the other. Through this division each government is entrusted with those functions which it is best adapted to perform, and encroachment by one authority upon another is prevented by written constitutions defining the powers of each government.

¹ The first elaborate discussion of the principle of separation of governmental powers was that of the great French publicist, Montesquieu, whose work *L'Esprit des Lois* (The Spirit of the Laws) was published in 1748. Montesquieu wrote of the British government where separation of powers had ceased to exist in fact, Parliament having become the all-powerful element of the British government.

109. The Development of State Constitutions. Three periods may be distinguished in the development of State constitutions: first, from 1776 to 1800 (including the Revolutionary constitutions and the new constitutions adopted within the next twenty years); second, from 1800 to the Civil War; third, from the Civil War to the present time.

110. Second Period, 1800-1860. The period from the beginning of the nineteenth century to the Civil War is ~~Democratic~~ marked by the democratic spirit which every-spirit where left its imprint upon political institutions. The principle became firmly established that a constitution should be framed by a special convention called for that purpose, and subsequently ratified by popular vote. The property qualifications formerly prescribed for voters were replaced in most commonwealths by universal manhood suffrage. The election of the governor was taken from the legislature and given to the people; and in most States, the judiciary likewise became elective.

111. Third Period, 1860 to the present Time. Three important characteristics marked the third period in the ~~Executive authority enlarged~~ development of State constitutions. First, the tendency to strengthen the executive department. The term of the governor has been lengthened, and in every State except North Carolina, he has been entrusted with a limited veto upon legislation.

The second characteristic is the placing of important limitations upon the power of the legislature. The ~~Legislative power restricted~~ limitations most commonly found are those upon special legislation, concerning internal improvements, restricting the amount of indebtedness which may be incurred during any one year, and limiting the length of the legislative session.

A third characteristic is the enlarging of the field of administrative activity. The agricultural State of the eighteenth century has been succeeded by the modern industrial State, and the field of governmental activity has

broadened accordingly. Hence recent constitutions include numerous provisions concerning the public schools, charitable and reformatory institutions, regulating the hours of labor and conditions in factories and workshops, protecting the public health, suppressing lotteries and gambling, regulating corporations, and providing for the government of municipalities.

112. Enactment of State Constitutions. Many of the Revolutionary constitutions were drawn up by conventions or congresses which constituted the temporary form of government; and Massachusetts alone (in 1780) adopted the method of procedure commonly followed of electing delegates to a convention for the express purpose of framing a constitution, and afterwards submitting the instrument thus drafted to the people for approval.

The States which have been admitted to the Union since 1789 have entered it as organized self-governing communities, with constitutions already formed. When Congress decides to admit a territory to statehood, it may pass an act empowering its people to hold a convention and enact a constitution; or Congress may accept and confirm a constitution previously drawn up by a territorial convention.

113. Amendment of State Constitutions. Three different methods have been evolved whereby State constitutions may be amended. (1) About two thirds of the States provide for amendment by a constitutional convention composed of delegates elected by the voters. (2) Another general method of amendment, found in all States except New Hampshire, is through legislative action subsequently ratified by popular vote. (3) Within the last decade several commonwealths have adopted a method of amendment entirely independent of the legislature, through the popular initiative and referendum.

114. Amendment by Constitutional Convention. The

convention method is universally employed when it is desired to adopt a new constitution to replace the existing one. Sometimes the State constitution itself provides for such conventions at regular intervals; and in seven commonwealths, the constitutions require a periodical vote of the people (once in seven, ten, sixteen, or twenty years) upon the question whether a convention shall be called. Elsewhere the initiative is left to the legislature, which may declare by vote or resolution in favor of a convention.¹ After notice by publication, a vote of the people is taken on the question of calling a convention, and the legislature then acts in accordance with the result of the popular vote. If the majority has been favorable, the legislature arranges for the election of delegates to the convention, ordinarily from districts throughout the State; and also fixes the time and place for the convention sessions. After the convention has completed its work, the common practice is to submit the new constitution to the voters for their approval or disapproval.²

115. Amendments proposed by Legislatures. Frequently, separate constitutional amendments are adopted *Proposal and ratification* which do not involve revision of the entire instrument. These are usually proposed by the legislature and then submitted to popular vote. In some States only a majority vote of the legislature is required for the proposal of amendments, but generally a special majority in each house is required, as two thirds or three fourths of the members. In several commonwealths amendments cannot be considered until they have been proposed by two successive legislatures. After the amendment is proposed, it must be ratified by the voters, special majorities of the popular vote being sometimes required.

¹ A majority of the States require a two-thirds vote of the members of both houses in order to pass such a resolution.

² Of one hundred and fifty-seven constitutional conventions down to 1887, one hundred and thirteen submitted their work to the people and forty-four did not. — Jameson, J. A., *Constitutional Conventions*, p. 496. Sometimes an absolute majority of all qualified voters is required for ratification; generally only a majority of the votes cast at the polls.

116. Amendment through the Initiative and Referendum. A third method of amendment, that of the initiative and referendum, is found in several commonwealths. For example, in Oregon eight per cent of the legal voters may propose an amendment by petition. The proposal must be submitted to the voters, and if it receives a majority of all votes cast thereon, it becomes a part of the constitution. Other States which provide for the amendment of their constitutions through the initiative are: Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, and Oklahoma.

117. Authority of State Constitutions. The constitution together with its amendments constitutes the supreme or fundamental law of the commonwealth, to which all authorities, executive, legislative, and judicial, ^{Supreme or fundamental law} are subordinated. It is to be regarded as an organic law made by the people themselves acting through special conventions; and its high authority is owing to the fact that its enactment is a direct exercise of popular sovereignty. Hence the constitution overrides all minor State laws, and any act contrary to its provisions is null and void, and will be so declared by the courts if the act be drawn in question. On the other hand, the State constitution must not conflict with any provision of the federal constitution, or with any federal statute or treaty authorized under that instrument. If it is claimed that such a conflict exists, the ultimate decision will be made by the federal courts.

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QUESTIONS AND EXERCISES

1. When, by whom, and under what circumstances was the constitution of your State made?
2. Was it ratified by popular vote? Why should the people vote upon this question?
3. How many constitutions has your State had in all? Has any proposed constitution ever been rejected by the voters?
4. Does the present constitution of your State lack any of the parts named in Section 108?
5. If there is a bill of rights, make a list of the rights enumerated. Compare with those asserted in Magna Carta, the Bill of Rights (1689), the Declaration of Independence, and the Constitution of the United States.
6. Give reasons for the increased number of miscellaneous provisions inserted in recent State constitutions (Sec. 111). Compare the number and content of the miscellaneous provisions in your State constitution with those of a recent constitution, e. g., Oklahoma, and also with those of an older constitution, e. g., Massachusetts.
7. How many amendments have been added to your State constitution? Make an outline showing in a few words the general subject-matter of each amendment.
8. Compare the amendments of your State constitution with those of the constitution of some other State.
9. Describe in detail the method by which your State constitution may be amended, giving (a) the method of proposing amendments, and (b) the method of ratification.
10. Suggested readings on State constitutions: Kaye, P. L., *Readings in Civil Government*, pp. 261-281.

CHAPTER IX

THE STATE LEGISLATURE

118. **Composition of the Legislature.** The State legislature or general assembly invariably consists of two houses, the smaller of which is called the senate, the more ^{A two-}
^{house body} numerous being styled the house of representatives, or assembly, or house of delegates.¹ The two houses have practically equal powers, differing chiefly in the number of members, in the length of their term, and in certain special duties imposed upon each branch. The average membership of the senate is about thirty, while the house of representatives is generally three or four times as large.

For the purpose of electing members the States are divided into numerous senatorial and house election districts, the senatorial districts being considerably larger ^{Election}
^{districts} than the house districts.² In many commonwealths the county is the unit for districting, each county electing one or more members to the house, according to its population; while several counties are united into a single district to elect a senator.

An objection frequently urged against our method of electing legislators is that these officers represent not the entire body of voters, but the majority only. Various plans of securing minority representation ^{Minority}
^{representa-}
^{tion} have been proposed. One of these is the cumulative vote, which gives each elector as many votes as there are places to be filled, and allows him to distribute his votes as

¹ Three States, Pennsylvania, Georgia, and Vermont, have experimented with legislatures consisting of a single house, but at present the two-house plan is universal.

² In New England (excepting Massachusetts), each town ordinarily elects one or more members of the lower house of the legislature.

he pleases.¹ By concentrating their votes upon one candidate, a large minority in any district is thus assured of representation.

119. The Members of the Legislature. Members of the legislature are chosen by voters possessing the qualifications as to age, citizenship, and residence prescribed by the State constitution. Several commonwealths also have an educational or property qualification. As a rule, a person qualified to vote is eligible to membership; but holders of public office, State or federal, are generally disqualified from sitting in the legislature. In a few commonwealths, the age qualification for the Senate is higher than that for the house. In all States, either by law or custom, members must reside in the district from which they are elected.

The term of a senator is generally longer than that of a representative, although in nineteen commonwealths it is the same. In most of the States, senators are elected for four years, while the common term for representatives is two years.² In twenty-four States the senate differs from the house in being a continuous body, only half of its membership being renewed at one time. Senators and representatives receive the same compensation, either an annual salary or a *per diem* compensation based upon the length of the legislative session.

120. Organization and Procedure. The time for the meeting of the legislature is fixed either by the State constitution or by statute. Annual sessions, formerly the common practice, are now held in only six States;³ while elsewhere sessions are biennial.⁴ Special

¹ This is the method followed in Illinois in the election of members of the lower house of the legislature. Three representatives are chosen from each district, and the voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute his votes in equal parts thereof as he sees fit.

² Massachusetts retains the old practice of annual elections for both senators and representatives, New York and New Jersey elect representatives annually.

³ Georgia, Massachusetts, New Jersey, Rhode Island, New York, and South Carolina.

⁴ Except in Alabama, where the regular meetings are held every four years.

sessions may be called by the governor if occasion requires, or the legislature itself may adjourn to meet later in special session. The length of the session is often restricted to forty or sixty days. In case the two houses fail to agree upon a time for adjournment, the governor may adjourn them. The legislature sits at the State capitol, or State house, each branch having its separate chamber.

The internal organization follows closely that of Congress. Each house chooses its own officers (except that the lieutenant-governor is frequently the presiding officer of the senate). In each house there is a body of standing committees, generally appointed by its presiding officer, and a group of party leaders who act as a steering committee. Some legislatures, following the procedure in Congress, have a committee on rules which determines the order in which measures shall be considered. Each house determines its own rules of procedure; exercises the exclusive right of deciding upon the election and qualifications of its members; keeps a journal or record of its proceedings; disciplines members for disorderly or contemptuous behavior, even to the extent of expelling them;¹ and punishes persons guilty of contempt of the house or breach of its privileges. The legislature has the power to compel the attendance of witnesses and the production of papers when necessary to obtain information in aid of legislation; or it may appoint committees and invest them with these powers.

During the sessions, members of the legislature are privileged from arrest on civil process;² and they also have the privilege of freedom of speech as to utterances made in the discharge of their official duties.

¹ A two-thirds vote is ordinarily required to expel a member.

² "The object of the privilege from arrest is to exempt members from being interfered with by judicial procedure while in the discharge of their duties. At other times and in other respects they are subject to the jurisdiction of the courts as fully as private persons. Indeed, the exemption is of little practical value, as arrest or seizure of the person is no longer generally authorized except for crime, and all crimes of a serious nature are included within the description of treason, felony, and breach of the peace." — McClain, E., *Constitutional Law in the United States*, p. 69.

121. The Enactment of Laws. No law can be passed except by bill, which may be defined as "a written draft ~~introduction~~ of a proposed act of legislation."¹ A bill may ~~of bills~~ originate in either house (except bills for raising revenue, which under most constitutions must originate in the lower branch). Bills may be introduced by any member, or by a committee, or by a message from the other house.²

Upon introduction the bill is read (usually by title only), and referred to the appropriate standing committee. If ~~Process of~~ ^{legislation} favorably considered by the committee, it is printed and reported back to the house with such amendments as the committee may favor. The bill now receives its second reading,³ being read and debated section by section, and may be adopted, rejected, amended, referred back to the committee, or referred to the committee of the whole⁴ for further consideration. If the bill passes upon second reading, it is generally referred to the committee on revision. It is then engrossed, that is, copied in legislative script, after which it is reported back to the house for its third reading and final vote. Many constitutions provide that on the final vote on every bill, the yeas and nays shall be entered upon the journal. This provision is intended to fix upon each member his due share of responsibility for legislation, and also to furnish conclusive evidence of the passage of a bill by the requisite majority. Some constitutions provide that all bills, or all bills on certain subjects, must receive a majority vote of the members elected; otherwise, a simple majority of a quorum⁵ is sufficient.

After a measure passes one house, the engrossed copy is ~~Saint action~~ sent to the other house, where the same process is ~~necessary~~ repeated. A measure which has passed one house

¹ Black, H. C., *Constitutional Law*, p. 325.

² In all States the governor has power to recommend legislation in his message.

³ In some legislatures the second reading follows immediately after the first reading in title; but the constitutions of many States require separate readings on different days.

⁴ The committee of the whole is the entire house acting as a committee.

⁵ By a quorum is meant the number necessary to transact business — generally a majority of the members elected.

may be altered, amended, or rejected by the other; but to become a law, the same act must pass both houses in the same identical form. If the measure is amended, it must go back to the originating house. If this body does not concur in the amendments, an effort is made to reach an agreement through the appointment by each house of members of a conference committee. When a bill has passed both houses it is enrolled, then signed in open session by the presiding officer of each house, and presented to the governor.

122. The Governor's Veto. In all commonwealths except North Carolina, every bill which has passed both branches of the legislature must be submitted to the governor for his approval. If he signs the measure, it thereby becomes law; if not, he returns it with his objections to the house in which it originated, where the objections are entered at large upon the journal. Upon reconsideration the bill may become law notwithstanding the veto, provided it receives the votes of a sufficiently large majority (ordinarily two thirds of the members in each house). The governor generally has a period of ten days (excluding Sundays and holidays) in which to veto a measure. If he does not return the bill with his objections within this period, it becomes a law without his signature, unless the legislature by adjournment prevents its return. In a majority of the States the governor possesses the important power of vetoing particular items in an appropriation bill, while approving the rest of the measure.

Unless otherwise provided, an act becomes operative and in force from the time of its approval by the governor. In many cases statutes are passed to take effect either at the end of a stated period after approval, or on publication in a specified manner. The object of postponing the time of taking effect is to enable those affected by a statute to advise themselves of its provisions.

123. Scope of State Legislative Power. The power of

When statutes become operative

Contrast with Congress the State legislature extends to every subject of legislation, unless in the particular instance its exercise is forbidden by some provision of the State or federal constitution. Unlike Congress, which possesses legislative authority only over enumerated classes of subjects, the State legislature possesses general powers of legislation. If the question arises whether the legislature has power to pass a certain law, the presumption is that it can do so; and some positive prohibition either in the federal or State constitution must appear to overcome this presumption.¹

The possible subjects of State legislation may be classified under three heads: —

(1) Ordinary private law, or the body of law which guides us in the every-day relations of life, as the law of contracts, domestic relations, property, torts, and crimes.

(2) Administrative law, or the law relating to the carrying on of government, to the raising and expending of revenues, and to the control of personal and property rights so as to secure the general welfare. This includes legislation concerning local government, public works, education, corporations, charitable and penal institutions.

(3) Local and special laws, or laws which apply to less than a class of subjects, as measures granting franchises to particular corporations, incorporating certain local communities, and the like.²

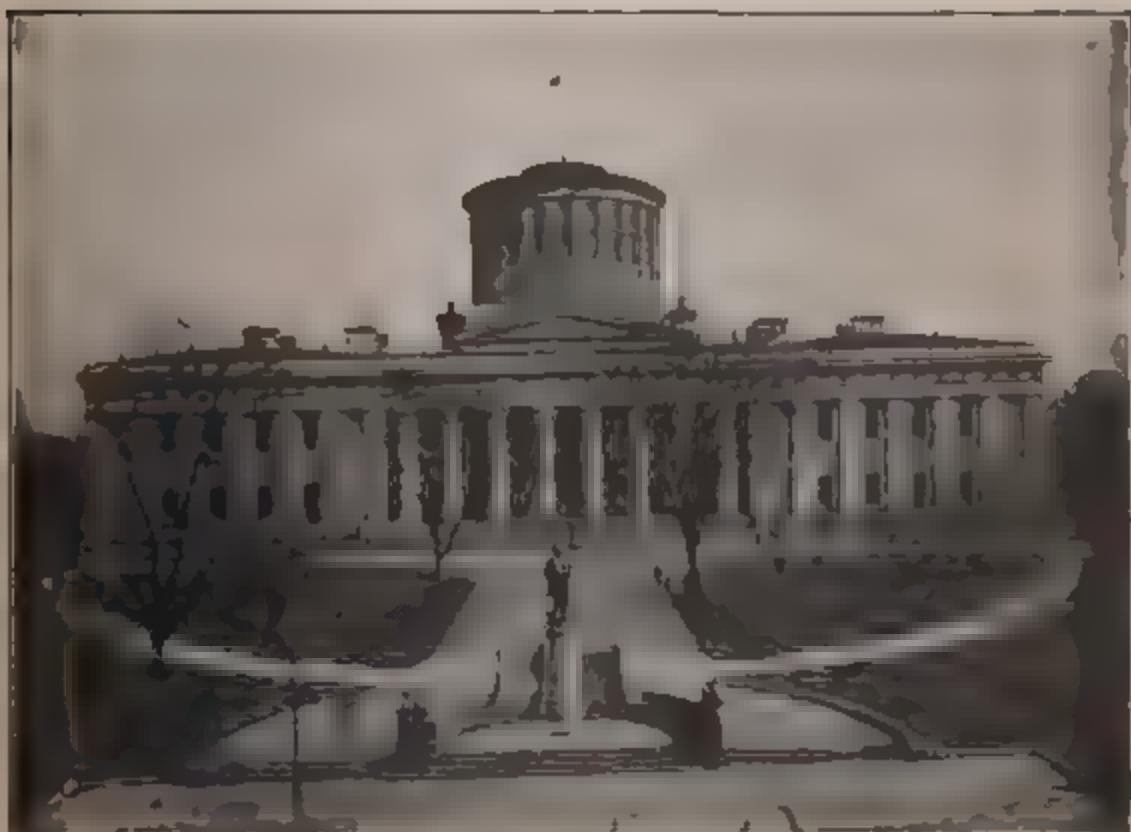
124. Non-Legislative Duties. Besides their power to make laws, the legislatures of some commonwealths are charged with certain functions not legislative, notably the important one of electing certain State officers. Generally, too, they may impeach

¹ On the other hand, every act of Congress must be traced for its authority to the national constitution, unless it can be affirmatively shown that the power to legislate in the particular instance is granted or implied by that instrument, it cannot be exercised.

² More legislation of the third class, local and special, is passed than of both the others together, and so excessive and objectionable has special legislation become that many States prohibit it altogether in regard to important classes of subjects.



NEW YORK STATE CAPITOL AT ALBANY



OHIO STATE CAPITOL AT COLUMBUS

HOUSE

No. 582

Bill accompanying the petition of William T. Dunn and others for legislation to remove certain restrictions upon fishing in the waters of Buzzards Bay. Fisheries and Game January 24.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Ten.

AN ACT

Relative to taking Fish in the Waters of Buzzards Bay.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The mayor and aldermen of the city
2 of New Bedford and the selectmen of any town bor-
3 dering on the waters of Buzzards bay, may issue
4 written permits authorizing any person to con-
5 struct, maintain and operate weirs, pound nets or
6 fish traps, in the waters within the limits of such
7 city or town, for a term not exceeding five years
8 from the date of issue, in accordance with the pro-
9 visions of this act.

1 SECTION 2. No weir, pound or trap shall be au-
2 thorized the total length of which exceeds twelve
3 hundred feet.

1 SECTION 3. Said permits shall state the location
2 in which said weir, pound or trap is to be located,
3 the date when said permit expires, and shall be
4 signed by the mayor and at least two aldermen and
5 by a majority of the selectmen of the town in which
6 said permit is issued.

1 SECTION 4. A fee of five dollars shall be paid for
2 each permit issued by the person to whom same
3 is issued.

1 SECTION 5. Nothing herein contained shall be
2 construed as authorizing the construction, opera-
3 tion or maintenance of floating traps, so called, or
4 other movable apparatus.

1 SECTION 6. The provisions of section one hun-
2 dred and twenty-one of chapter ninety-one of the
3 Revised Laws, and of all acts or parts of acts in-
4 consistent herewith, are hereby repealed.

1 SECTION 7. This act shall take effect upon its
2 passage.

any State official for misconduct, the procedure in such cases resembling that in Congress.

125. Limitations upon Powers of State Legislatures. Although in theory State legislatures are invested with general authority to make laws, in practice their action is checked by important limitations. These limitations may be grouped under four heads: (1) those expressly imposed by the national constitution; (2) those implied from provisions of the national constitution, or from the nature of the relation between the States and the federal government; (3) those expressly imposed by the State constitutions; (4) those implied from the republican nature of State government.

126. Limitations imposed by the Federal Constitution. The express limitations imposed by the federal constitution upon the legislative power of the States are ^{Object} found in Article I, Section 10, of the national constitution, and also in the thirteenth, fourteenth, and fifteenth amendments.¹ These restrictions are designed first, to prevent the States from infringing upon the sphere of the national government (*e.g.*, no State may enter into any treaty, coin money, or emit bills of credit); and second, to secure private and political rights from encroachment on the part of the States (*e.g.*, no State may pass any law impairing the obligation of contracts, establish slavery, or deprive any person of life, liberty, or property without due process of law.)

127. Limitations implied from Federal Constitution. The second class of limitations upon the legislative power of the States are those implied either from express provisions of the federal constitution, or from the nature of the relation between the States and the federal government. Thus in some cases the powers granted Congress are exclusive, either because so declared in express terms — as the power "to exercise exclusive legislation"

<sup>Exclusive
federal
powers</sup>

¹ See Sections 305-306.

over the seat of government; or because the subject-matter of the power is national in character, demanding a uniform system; for example, the power to establish a uniform system of naturalization.¹

128. Limitations imposed by State Constitutions. Examples of subjects frequently prohibited are: statutes ~~Measures commonly prohibited~~ consistent with democratic principles (favoring any religious denomination, or granting titles of nobility); statutes against public policy (impairing the obligation of contracts, permitting lotteries); statutes which are private, local, or special in their nature (especially those designed to regulate the internal affairs of counties and municipalities); statutes increasing the State or local debt beyond a certain amount.

129. Limitations implied from the Republican Nature of State Government. For example, there are certain implied ~~To protect political rights~~ limitations upon legislative power as a result of the principle that the legislature is to be regarded as a trustee for the people. Hence legislative power may not be delegated to any other body or person, but must be exercised by the legislature itself; nor can public property or governmental powers (as taxation and police powers) be surrendered to private persons. Public money raised by taxation can be appropriated and expended only for public purposes. Nor can the legislature pass any law which may not be repealed by a subsequent legislature, unless the act takes the form of a contract founded upon a consideration.

130. Direct Legislation. By direct legislation is meant that in which the people participate directly, instead of ~~The referendum~~ acting through their representatives. The most common example is the referendum, by which legislative measures are submitted to popular vote for approval or rejection.² Early in our history it became an es-

¹ See Section 307.

² "The referendum is a plan whereby a small percentage of the voters may demand that any statute passed by the legislature (with the exception of certain laws) must be submitted to the electorate and approved by a stipulated majority before going into effect." — Beard, C. A., *American Government and Politics*, p. 463.

tablished principle that proposed constitutions or amendments should be referred to the voters for ratification. The referendum has since been employed to determine questions of ordinary legislation, as the incorporation of municipalities, the organization of counties and townships, location of county seats, incurring of indebtedness, granting of municipal franchises, and issuing of liquor licenses. The referendum affords a valuable check upon the action of State legislatures and municipal councils; and it also provides a certain means of determining whether proposed legislation is approved by public sentiment.

The logical complement of the referendum is the initiative, by which a certain percentage of the voters are empowered to propose measures which must subsequently, with or without the intervention of ^{initiative} the legislature, be submitted to popular vote. For example, the constitution of Oregon provides that any legislative measure may be initiated by a petition bearing the signatures of eight per cent of the voters, and containing the proposed measure in full. The petition must be filed with the Secretary of State at least four months before election day; and if approved by a majority of all those voting upon it at the election, the measure becomes a law.¹ Nineteen commonwealths have authorized the initiative and referendum in the case of State laws, and thirteen of these permit the voters to initiate constitutional amendments, as well as statutes.

¹ The Oregon statute provides for the publication and distribution of arguments for and against the propositions thus submitted to the voters for decision.

PROGRESS OF ELECTORAL REFORM

STATE	Initiative and Referendum	Recall	Direct Primary	Presidential Preference Primary
Alabama			P. R.	
Arizona	1911	1911-12	1909-12	
Arkansas	1910		F. R.	
California	1911	1911	1909	
Colorado	1910	1912	1910	
Connecticut				
Delaware				
Florida			1913	
Georgia			P. R.	
Idaho	1912	1912	1909	
Illinois			1910	
Indiana			1915	1915
Iowa			1907	1913
Kansas		1914	1908	
Kentucky			1912	
Louisiana		1914	1912	
Maine	1908		1911	
Maryland	1915*		1910	1912
Massachusetts	1916		1911	1912
Michigan	1918	1913	1909	1912
Minnesota			1912	1918
Mississippi	1914		1912	
Missouri	1908		1907	
Montana	1906		1912	
Nebraska	1912		1907	1911
Nevada	1904-12	1912	1909	
New Hampshire			1909	1913
New Jersey			1911	1911
New Mexico	1911*			
New York			1913	1915
North Carolina				1915
North Dakota	1914		1907	1911
Ohio	1912		1908	1913
Oklahoma	1907		1908	
Oregon	1902	1908	1904	1910
Pennsylvania			1913	1913
Rhode Island				
South Carolina			P. R.	
South Dakota	1893		1907	1912
Tennessee			1909	
Texas			P. R.	
Utah	1903			
Vermont			1915	1915
Virginia			1912	
Washington	1912	1912	1907	
West Virginia			1916	
Wisconsin			1903	1911
Wyoming			1911	
Total	92	10	42	21

* The referendum only

P. R. In these States the direct primary is conducted under the rules of the Democratic party, but is not established by statute for all parties.

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QUESTIONS AND EXERCISES

1. What is the official name of your State legislature? Of each house? How many members in each house? Qualifications for members?
2. Give arguments for and against the requirement that a member must be a resident of the district which elects him.
3. Is the division of your State into senatorial and representative districts an equitable one?
4. For what term are members of your legislature chosen? What salary do they receive? Is the senate a continuous body?
5. Does your district frequently return the same members to the legislature, or is rotation in office customary? Who are the present members from your district? To which political party do they belong?
6. How often does your legislature meet? Is the length of the session limited by the constitution?
7. Name the officers of each legislative house. Principal duties of each?
8. Discuss the position of the speaker of the lower house, and compare his influence upon legislation with that of the lieutenant-governor.
9. How many committees in each branch of your legislature? Name the most important ones.
10. Discuss the advantages and defects of the committee system.
11. Describe the steps by which a bill is enacted into law in your State.
12. What constitutes a quorum in each house of your legislature? How many votes are necessary in each house to pass a bill the first time? Over the governor's veto?
13. Organize your class into a house of the State legislature, and draw up and pass a bill in due form. (If possible obtain the assistance of your local representative.)
14. Make a list of the chief subjects with which your State legislature may deal. Compare this with the list of subjects over which a city council or town meeting has authority.
15. What are the special powers of each branch of your State legislature?
16. What is meant by the "lobby"?
17. Give reasons for the growing popularity of the initiative and the referendum. (Kaye, P. L., *Readings*, pp. 295-303.) Is either of these forms of direct legislation employed in your State or county?

CHAPTER X

THE STATE EXECUTIVE

131. Contrast between State and Federal Executives.

The organization of the executive department of the State government differs materially from that of the federal executive. In the national government, ~~Federal executive power centralized~~ executive power is vested in a single individual, the President of the United States. He alone is an elective officer, other executive officials being appointed by and responsible to him.

But in the State governments, executive power is vested in a number of elective and appointive officers who, together with the governor, share the executive power. The secretary of state, auditor, treasurer, ~~State executive powers distributed~~ and attorney-general are, like the governor, elected by the people; and they are as independent of him as is the legislature. In fact they are the governor's colleagues, not his agents or subordinates. Nor is the executive power vested solely in the governor and other principal State officers; for the actual execution of the laws does not rest with them, but with local officers chosen by the towns, counties, and municipalities. These local officials, including sheriffs and other county officers, town and city officials, are not ordinarily subject to State supervision, much less to immediate State control. They hold themselves accountable not to the State as a whole, but only to their part of the State. Hence State administration is decentralized; and the governor is not, like the President, directly and exclusively responsible for the execution of the laws.

132. Election and Term of the Governor. The governor

is everywhere elected by popular suffrage, the earlier method of choice by the legislature having been discarded. In most commonwealths the election for governor and other State officials is held on the Tuesday immediately following the first Monday in November. The term of office is either two or four years in nearly all of the States.¹ Popular governors are often reelected in commonwealths having the shorter terms, while elsewhere reelection is less frequent. The constitutions of seven States prohibit the governor from serving two successive terms.

133. Qualifications and Salary. The constitutional qualifications for governor generally relate to age, residence, and citizenship. These qualifications vary widely, those most frequently prescribed being thirty years of age, five years of residence, and the same period of citizenship. The average salary of the governor is about \$5000.

134. Administrative Powers and Duties. As his foremost administrative duty, the governor is to take care that the laws are faithfully executed; but in the performance of this comprehensive duty his power is limited by the fact that the execution of the laws is largely entrusted to State and local officials over whom he has slight control. "If he is of much force in the government of the State, it is because of his strong character. He is a passenger on board the ship, which is navigated by a crew which he does not select, and over which he has few powers of command."²

However, the governor has a general supervisory power over the executive officers of the State; he may investigate their conduct of business and require information upon subjects relating to the duties of their respective offices. Furthermore, he has the power of appointing the less important State officers (confirmation).

¹ Twenty-two States fix the governor's term at four years, twenty-five at two years. In New Jersey the term is three years. The governor usually takes office in January of the odd-numbered year following his election.

² Landon, J. S., *The Constitutional History and Government of the United States*, p. 69.

tion by the Senate being frequently required); and in some commonwealths he has a limited power of removal.¹ When an elective State office becomes vacant, the governor appoints some one to serve until the next election.

The governor is commander-in-chief of the State militia,² and may call them out to repel invasion, or to suppress military riots, insurrection, or disorder. The military authority of the governor is invoked by the sheriff or the mayor when local resistance to the law becomes too powerful to be suppressed by the means at his disposal.

135. Political Duties. More important than the foregoing administrative powers are the governor's political duties, especially those in connection with legislation. At the beginning of the session he transmits to the legislature a message calling attention to measures which he deems necessary. If urgent matters demand immediate consideration, he may summon the legislature to meet in special session; and he may adjourn that body in case the two houses are unable to agree upon a time for adjournment. Finally, in all States except North Carolina, the governor has a qualified veto upon all legislative acts, and in thirty commonwealths he may veto particular items in appropriation bills. Thus the governor exercises a large influence upon legislation, since only in exceptional cases is a bill likely to pass over his veto.³

Almost universally the governor has the power to grant pardons and reprieves in case of offenses committed against the State. A pardon discharges the individual and pardons from all or some of the consequences of his crime; while a reprieve suspends execution of the sentence for a specified time. In some commonwealths the governor may

¹ Generally the exercise of this power is conditioned upon obtaining the consent of the senate or council, and upon the finding of cause (malfeasance in office or neglect of duty). In New York and a few other States, the governor is permitted to remove even local officers under certain conditions. In Colorado, Maryland, Illinois, Nebraska, and Pennsylvania, he may remove those officers whom he appoints.

² Except when in the actual service of the United States.

³ Generally a two-thirds or three-fifths vote is required to pass a bill over the governor's veto. In Connecticut, Vermont, New Jersey, and Indiana, a simple majority is sufficient.

exercise this power only in conjunction with a board of pardons.

136. State Governors under the Federal Constitution. The duties of the governor of a State are regulated to some extent by the federal constitution. For example, ^{Powers and duties} a person charged with crime who escapes to another State must be delivered up to the executive authority of the State from which he fled upon the requisition of its governor.¹ Again, the United States is bound to protect each State against domestic violence upon application from its legislature; or if the legislature cannot be convened, at the request of the governor.² If vacancies occur in either branch of Congress, the governor of the State concerned issues writs of election to fill the vacancy. If the State legislature so directs, he may make a temporary appointment to the United States Senate, until the people fill the vacancy by election.³

137. Other Principal Executive Officers. Other important executive officers are the lieutenant-governor (in thirty-six States); the secretary of State, and the treasurer (in all States); the comptroller or auditor, the attorney-general, and the superintendent of public instruction (in nearly every State). Ordinarily these officers are chosen by the voters at the general State election; but in several commonwealths certain important executive officers are appointed by the governor or elected by the legislature. Their term varies from one to four years, frequently being the same as that of the governor.

The principal executive officers are not under the direction or control of the governor or the legislature. Their duties are prescribed in the State constitution, ^{Relation to} and for their official acts they are responsible only ^{governor and legislature} to the people and the courts. They do not constitute a cabinet responsible to the chief executive as in the

¹ *United States Constitution*, Art. IV, Sec. 2.

² *Ibid.*, Art. IV, Sec. 4.

³ *Ibid.*, Amendment XVII.

presidential system of the national government, or a ministry responsible to the legislature as in the parliamentary system of European governments.¹

138. The Lieutenant-Governor. The lieutenant-governor ~~nature of office~~ is generally president of the State senate, with a casting vote in case of a tie. He succeeds the governor in case of the latter's death, resignation, removal, or disability.

139. The Secretary of State. The secretary of State has charge of all State records, and of the seal of the commonwealth by which State documents are authenticated. ~~Chief Clerk of the State~~ He publishes the laws of the State; registers the official acts of the governor; certifies the incorporation of all companies; draws up commissions to public officers; takes charge of the returns of elections; and collects and publishes statistics.

140. State Auditor or Comptroller. The State auditor or comptroller is the public accountant charged with supervision of the State's financial business. ~~State Finance~~ He examines and passes upon all claims presented against the commonwealth; and no money can be paid out of the treasury except upon a warrant issued by him. He prepares for the legislature estimates of revenues and expenditures; audits the accounts of all officers charged with the collection of revenue; sees to it that such officers are under sufficient bond; and enforces payment of moneys withheld or uncollected. He keeps a record of all moneys paid into the treasury, and of all appropriations and warrants; and since his books must tally with those kept by the treasurer, his office serves as a check upon the latter.

141. The State Treasurer. The treasurer receives all ~~custodian of~~ State funds, for which he issues receipts, and disbursements them only upon warrants signed by the auditor. At stated intervals he is required to publish state-

¹ Usually, the chief executive officers can be removed only by impeachment. States having the recall for all elective State officers, or for all except judges, are Arizona, California, Colorado, Idaho, Kansas, Louisiana, Michigan, Nevada, Oregon, and Washington.

ments of balances, and his books, like those of the auditor, are at all times open to inspection. Both treasurer and auditor are often *ex officio* members of various financial boards.

142. The Attorney-General. The attorney-general is the legal adviser of the governor and other officers, and he also represents the commonwealth in all civil and ^{State's} criminal cases to which the State is a party. Especially is it the duty of this officer, aided by the district prosecuting attorneys or solicitors, to watch over and protect the constitution of the State from encroachment by the government or violation by individuals. The numerous cases in the courts entitled *State ex rel. v. ——*, or *People v. ——*, are the mediums through which the attorney-general and prosecuting attorneys attack offenders against the constitution and the laws. These proceedings generally take the form of prosecution by *indictment* for criminal offenses; or *mandamus* to compel the performance of official or other public duties; or *quo warranto* to try the right to exercise a public office or franchise; or *information* or *bill in equity* to vindicate the rights of the State or of the general public.¹

143. State Superintendent or Commissioner of Schools. The superintendent of public instruction, sometimes known as the commissioner of public schools, exercises a general supervision over the public school system. In the commonwealths having State boards of education, he is generally an *ex officio* member of that board.

144. Appointive Officers of State Administration. In addition to these elective officers, a large number of appointive officials are charged with special administrative duties. Most of these are appointed by the governor (generally with the consent of the senate) for terms varying from one to four years; and they are ordinarily subject to removal by the appointing power. Among the most im-

¹ In this way the great Pullman Company was checked in its growth as a municipal corporation and compelled to sell the town of Pullman. — *People v. Pullman Car Co.*, 175 Ill. 102.

portant of these officials, some of whom at least are found in every commonwealth, may be named: adjutant-general; State surveyor; geologist; fire marshal; librarian; factory inspector; engineer; tax commissioner; superintendent of public printing; commissioner of banking; insurance commissioner; superintendent of weights and measures; commissioner of immigration; commissioner of agriculture; commissioner of mines and forests; food and dairy commissioner; superintendent of public works; superintendent of prisons.

145. State Boards or Commissions. In addition to these individual officers, a large share of administrative business is entrusted to State boards or commissions.¹ These **Composition** are generally appointed by the governor with the consent of the senate, for terms varying from four to eight years. Members are sometimes paid, especially when they give a large part of their time to the service; frequently they serve without pay, and elect an executive officer who receives a salary, and upon whom the greater part of the work devolves. The legislature often endows these boards with large powers, in the exercise of which they are practically free from executive control.

However, the present tendency is toward the consolidation of these boards, so as to secure more unity in State **Tendency** administration. For example, in 1917 Kansas **toward consolidation** created a State Board of Administration to control all the educational, benevolent, and penal institutions in that State. Ohio, North Carolina, and Kansas have recently established State accounting agencies to supervise the records and accounts of the various State officers and institutions. A still more important act of consolidation is the Illinois Administrative Code of 1917. This measure abolishes some fifty separate administrative agencies, and consolidates them into nine main departments,

¹ For example, boards of agriculture, health boards, railway commissions, boards of education, examining boards in the professions of law, medicine, etc.

namely: finance, agriculture, labor, mines and minerals, public works and buildings, public health, trade and commerce, registration and education, and public welfare. Each department is in charge of a director appointed by the governor with the consent of the Senate. This reform tends to centralize State administration, making the authority and responsibility of the governor more like that of the President.

146. Civil Service Reform. Early in the nineteenth century the "spoils system" was extensively applied in filling State as well as federal offices, these positions ~~The spoils system~~ being made the reward for successful electioneering and wire-pulling. Throughout the greater part of the Union the same system is still employed in filling appointive State offices, and frequently the main issue in political campaigns is the question which party shall control the patronage. Standards of service have been adopted which would not be tolerated in any successful private business. Tenure of office is often dependent not upon faithful devotion to public duty, but upon compliance with private instructions from the "regular organization."

To remedy the evils of the spoils system, nine States¹ have adopted systems of civil service reform similar to that employed by the federal government. The object ~~The merit system~~ of this merit system is threefold; first, to exclude ~~the merit system~~ ignorant and incompetent persons who have nothing to recommend them save political influence; second, to assure intelligent and competent persons an equal opportunity to secure public employment; and third, to make tenure of office secure for competent officials. To attain this end, the nine commonwealths named have established a system of competitive examinations, practical in character; political and religious interrogatives have been prohibited; assessments upon office-holders are forbidden; and tenure and

¹ New York, Massachusetts, Wisconsin, Colorado, New Jersey, California, Ohio, Connecticut, and Illinois.

promotion are made to depend upon ascertained merit rather than upon political influence.

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QUESTIONS AND EXERCISES

1. Give the term, qualifications, and salary of the governor of your State.
2. Is the governor of your State reëligible for a succeeding term?
3. Are candidates for governor in your State nominated at primaries or by conventions? When does the State election occur?
4. Who were the candidates for governor at the last election?
5. What officers may your governor appoint? Is the consent of the Senate necessary?
6. What powers of supervision may your governor exercise over State officials? Has he power to remove any officials?
7. What vacancies in judicial, county, or State offices may be filled by the governor in your State?
8. Examine the provisions of your State constitution concerning the governor's legislative powers.
9. How may the governor's veto be overcome in your State?
10. May your governor veto items in an appropriation bill?
11. What power has he over pardons and reprieves?
12. Has the governor of your State had occasion to call out the militia within recent years? If so, under what circumstances?
13. In general, would you say that the governor of your State exercises large or small powers over legislation and administration?
14. Who would succeed the governor in the event of a vacancy in this office?
15. In most commonwealths the seven principal executive officers are the governor, lieutenant-governor, secretary of State, treasurer, auditor or comptroller, attorney-general, and superintendent of education. Prepare an outline giving the following facts concerning each of these officers in your State, how chosen, term, qualifications, salary, duties and powers, how removed.
16. Prepare a list of the most important boards and commissions of your State. State concerning each, how chosen, term, and functions.
17. State the advantages and defects of State boards or commissions.

CHAPTER XI

THE STATE JUDICIARY

147. Development of Colonial Courts. In the early colonial period, the legislative assemblies of the various colonies exercised many judicial powers, acting as the early English parliaments, both as legislatures and as courts. During the century immediately preceding the Revolution, the assemblies were deprived of their judicial powers, and the colonial courts correspondingly strengthened. Gradually a judicial system was evolved, patterned largely after that of Great Britain, and consisting of several courts arranged in a progressive series.

From the highest colonial courts, cases of importance could be appealed to the English Privy Council; and this appeal was of especial importance in regard to colonial legislation deemed inconsistent with the laws of England. The Privy Council from time to time set aside colonial statutes and reversed the judgments of colonial courts.¹ This was the germ of the power of our supreme courts to decide upon the constitutionality of legislation.

148. The Common Law. The larger part of the law administered by colonial tribunals was the common law of England, modified by the legislative assemblies and by the courts themselves so as to conform to conditions in the new world. The English common law (known also as customary or unwritten law) "is that rule of civil conduct which originated in the common wisdom and experience of society, in time became an established custom, and has finally received judicial sanction and affirmation in the decision of the courts of last resort."² This law has been interpreted and largely developed by the courts, and is evidenced chiefly in their decisions of cases tried before them.

From the first the American colonists claimed the common law as their birthright, so far as it was applicable to their condi-

¹ The Judicial Committee of the Privy Council to-day exercises similar powers with reference to the British colonies.

² Robinson, W. C., *Elementary Law*, p. 2.

tion;¹ and upon the original foundation of the English common law the whole system of American jurisprudence has been built.

Except as modified by constitutional or statutory ^{American} ~~common law~~ enactments, the English common law, now become the

American common law through adaptation to our circumstances, state of society, and form of government, is to-day in force in the several States; and it constitutes by far the greater portion of that body of law by which rights are adjudged and wrongs redressed.

149. Equity. Equity is synonymous with justice, and originated in the deficiencies of the ancient common law. From the time ^{of the Norman-French conquest of England (1066).}

^{Origin} the king was held in legal theory to be the fountain of justice; and he was often petitioned to interpose between private individuals in cases where the regular law courts could grant no remedy, or no adequate remedy. These petitions the king referred to his Privy Council, and ultimately they were addressed directly to one member of that body called the chancellor. Thus if the legal title to land had been conveyed to one individual for the use of another, and the holder of the title refused to recognize the beneficial interest of the other, the chancellor could bring him to account, although the law would give no remedy. Soon whenever a man had justice on his side, but not law, it was deemed a case for the chancellor, and his jurisdiction expanded accordingly.

At common law one could recover money only, or specific real ^{Equity relief} or personal property; but the chancellor could grant such relief as seemed equitable — hence called relief in equity. Finally, a distinct set of chancery or equity courts came into existence, with special procedure² and remedies.

The chancery system thus created was introduced in America along with the common law; and at first, as originally in England, ^{Fusion of Law and equity} it was administered by separate courts. At the present time in most American commonwealths, equity is administered by the same judges who preside over the regular law courts.³ Legal and equitable causes of action may generally be joined, and legal and equitable relief given in one suit.

¹ One great excellence of the common law is the protection which it affords to individual rights. Hence when difficulties arose between the colonies and the mother country, the colonists appealed to the principles of the common law, and claimed that the king and parliament were seeking to deprive them of privileges which were their birthright as Englishmen.

² Courts of equity differed from the law courts in the mode of proof and of trial. In courts of equity, testimony was written instead of oral, and the judges decided questions of fact as well as of law, thus eliminating the jury.

³ Separate equity or chancery courts exist in New Jersey, Delaware, Tennessee, Alabama, and Mississippi.



SPOKANE COUNTY COURTHOUSE, SPOKANE, WASHINGTON



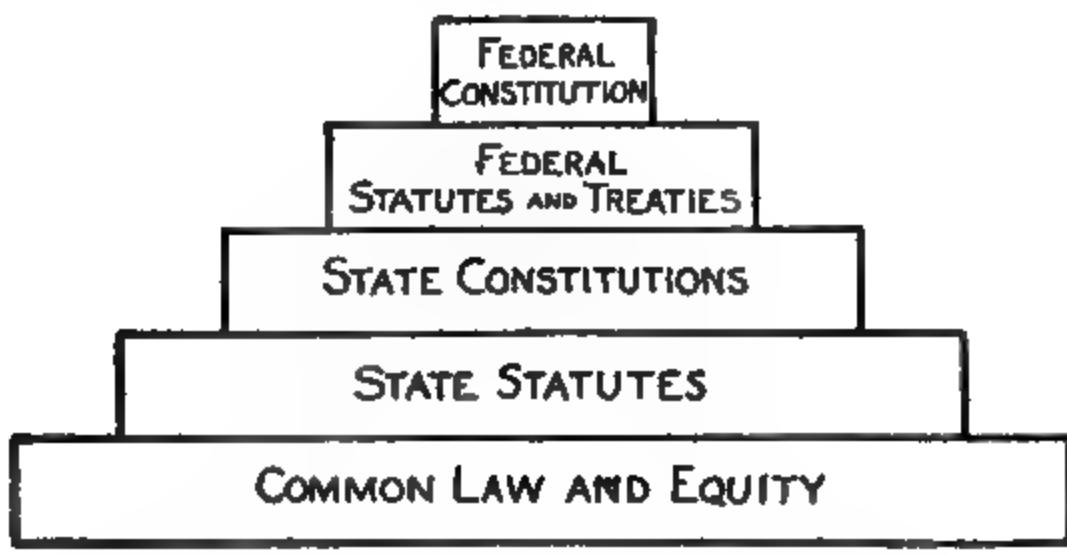
(By courtesy of Frank T. Leighton Co., Port and Me.)

CUMBERLAND COUNTY COURTHOUSE, PORTLAND, MAINE



150. Our System of Law. We have seen that the first great source of our body of law is the English common law: the second important source consists of the ~~State~~ ^{State} statutes enacted by the State legislatures. Most legislative measures belong to the branch of administrative law, relating to the structure and functions of government; but many statutes are passed affecting private law. Such are the laws relating to wills and the succession of property, marriage and divorce, corporations, partnerships, and crimes. Civil and criminal procedure is commonly regulated by statute, and a few commonwealths have gone even further, and attempted to codify the entire body of common law.¹

The State constitution is still another source of the law enforceable in the State courts. Next come the ~~Constitu-~~ ^{tions and} ~~and~~ ^{federal} ~~statutes~~ ^{statutes} federal statutes and treaties; and finally, the source of supreme and controlling authority is the federal constitution, with which all other laws must accord.



151. System of State Courts. The judicial power of each State is to-day vested in a system of courts generally

¹ Including Louisiana, California, North Dakota, and South Dakota.

comprising three grades: first, inferior courts, or those of lowest grade; second, courts of general original jurisdiction;¹ and third, courts of last resort.

152. Inferior Courts. Inferior courts include those of justices of the peace, and police or other city courts.

Justices' courts Justices of the peace have original jurisdiction over minor civil cases; for example, where the amount involved does not exceed a certain small sum (generally \$100), and where the title to real estate is not drawn into controversy. In some commonwealths, justices of the peace try petty offenses, such as breaches of the peace; while in the more serious criminal cases they may cause the arrest of persons charged with crime, and if there is *prima facie* evidence of guilt, bind over the accused to await the action of the grand jury.²

In large cities the civil and criminal jurisdiction of justices of the peace is ordinarily divided between two sets of **City and police courts**: the municipal or city courts, which exercise a minor civil jurisdiction; and police or magistrates' courts, which try petty criminal offenses, and make a preliminary investigation in case of felonies or serious misdemeanors.

153. Courts of General Original Jurisdiction. The second grade of State courts embraces those of general original jurisdiction,³ civil and criminal, over all suits, actions, and judicial proceedings (so far as this jurisdiction is not restricted by law). These are the ordinary courts for the trial of civil and criminal actions, and in them most of the judicial activity of the State is centered. In some commonwealths, courts of this class have appellate jurisdiction from the inferior justices' or municipal courts.

¹ Original jurisdiction is the power to hear or decide a legal controversy, or to administer a remedy, in the first instance. Appellate jurisdiction is the power to review the decision of some other court.

² If the grand jury finds that there is not sufficient evidence against the accused to warrant holding him for trial, he is discharged, if the contrary is the case, he is formally charged with the crime in an indictment, whereupon he must stand trial.

³ In different States this tribunal is known by different names, as the circuit court, district court, superior court, court of common pleas, etc.

154. Courts of Last Resort. The third and highest class of State tribunals is the supreme court, known also as the court of appeals, or court of errors and appeals. The supreme court¹ is the court of last resort in which the supreme judicial authority of the State is vested. This court usually sits at the State capitol. The number of judges ranges from three to nine, whereas a court of the first or second grade is ordinarily presided over by a single justice or judge. As a rule the principal business of the supreme court is to review the decisions of courts of the first and second grade in cases carried up on appeal or writ of error, and to determine whether the judgment of the lower court is to be sustained or reversed.² Its decisions are final and binding upon all persons within the State; but in exceptional classes of cases (where a federal law, treaty, or the federal constitution is involved), its decisions may be reviewed by the Supreme Court of the United States.

155. Special State Courts. In order to lighten the work of the court of last resort, several commonwealths, including Ohio, Texas, Georgia, Louisiana, and Missouri, have established between the courts of the second grade and the supreme court an intermediate court of appeals. This tribunal has appellate jurisdiction only, and its decisions are final in all except certain classes of cases, which may be carried up to the supreme court.

Most of the States have provided special courts (generally one for each county), variously called probate courts, surrogates' courts, orphans' courts, or courts in ordinary. These tribunals are vested with jurisdiction over the probate of wills, appointment of

¹ In several States, including New York and New Jersey, the so-called supreme court is not supreme in fact, since above the supreme court is a court of appeals to which certain cases may be taken. The latter is therefore the actual supreme court.

² This court also has power to issue prerogative writs and to grant extraordinary remedies, such as *writs of habeas corpus, mandamus, quo warranto, injunction, certiorari*, and *writs of error*.

Jurisdi-
ction and
authority

Interme-
diate courts
of appeal

Probate or
surrogates'
courts

administrators and guardians, care of the estates of wards,¹ and settlement of the estates of decedents.

156. Choice of State Judges. Under the first State constitutions, the selection of judges was generally entrusted either to the legislature or to the governor; but during the first half of the nineteenth century the choice of judges by popular vote became established as the general practice.² Supreme court justices are now generally elected by the voters of the commonwealth at large;³ while circuit, district, and county judges are chosen by the voters of the area included within the jurisdiction of the court.

157. Tenure of State Judges. Judges of the supreme court have practically a life tenure in only three States, Massachusetts, New Hampshire, and Rhode Island; while elsewhere they are chosen for a fixed term of years, varying from two in Vermont to twenty-one in Pennsylvania.⁴ The average constitutional term is about eight years, but re-election is frequent, so that the period of actual service is longer. The term of judges of the lower courts generally varies with the grade of the court, being especially short in case of justices of the peace. Like other commonwealth officers, judges may be removed through the process of impeachment.

158. Salary and Qualifications. Twenty-six States pay the judges of their highest courts more than \$5000, the average salary being about \$7000.⁵ Salaries of judges of lower courts are considerably less than those of supreme court

¹ Including minors who are orphans, the insane, and others deemed by the law incompetent to manage their own estates.

² Judges are now elected by popular vote in thirty-seven States; by the legislature in four (Rhode Island, Vermont, South Carolina, and Virginia); appointed by the governor in six (Massachusetts, Maine, New Hampshire, Connecticut, Delaware, and New Jersey), while in Florida judges of the supreme court are elected by the people, and circuit court judges nominated by the governor.

³ Sudden changes in the composition of the supreme court are prevented by providing that the term of only a few judges shall expire at the same time.

⁴ Eighteen commonwealths have a term of six years, ten of eight years, five States, including California, Delaware, Louisiana, Virginia, and West Virginia, have a twelve-year term, while in New York the term is fourteen years, and in Maryland fifteen.

⁵ The chief justice generally receives five hundred dollars more than the associate justices.

justices. The constitutions of most States provide that the salaries of judges may not be increased or diminished during their term of office.

The qualifications required for judges include a minimum age of twenty-five to thirty-five years, citizenship for a varying period of years, and residence within the State or judicial district. Comparatively few constitutions require judges to be members of the legal profession, although this qualification is prescribed by custom except for justices of the peace.

159. Subordinate Officers of Courts. The subordinate officers of State courts are the recording officer or clerk, the executive officer (sheriff or constable), and the ~~counsel~~ attorneys. The clerk or prothonotary keeps the record of all judicial proceedings, has charge of the seal of the court, and issues all writs. This officer is generally appointed by the court or elected by popular vote.

The executive officer of inferior courts is the constable, and of the higher State courts, the sheriff. These officers are elected by the voters of the township or ~~constable~~ county, respectively, and are charged with the ~~or sheriff~~ execution of all orders, judgments, and decrees of their respective courts.

Litigation is ordinarily conducted by men educated in the profession of law, known as attorneys. Before ~~attorneys~~ being admitted to practice, these officers must pass a satisfactory bar examination conducted under the authority of the supreme court. The government's cases are conducted by the attorney-general (representing the commonwealth as a whole), and by prosecuting attorneys or solicitors in each county.

160. The Protection of Rights. The jurisdiction of State courts extends to all classes of cases, civil and ~~private~~ criminal,¹ except as limited by provisions of the ~~rights~~ State or federal constitution. The chief purpose for which

¹ For the criminal jurisdiction of State courts see chapter XXII.

State governments exist is the protection of individual rights, including personal rights (of life, reputation, personal liberty, and bodily security); rights of property, or the free use and enjoyment of those things justly acquired; and contract rights, or the enforcement of legal agreements which one person has with another.

To deprive any person of a right which the law grants him is a legal wrong, rendering the offender liable to ~~Redress~~ ^{Retribution} ~~of wrongs~~ ^{secution} in court — "the place where justice is legally administered." Thus the person who suffers a legal wrong has the whole force of government at his disposal to secure redress, for the judgment of the court will be enforced by the executive authority of the State.

Legal wrongs are of two classes, public and private. If a wrong is committed primarily against a private person, it is known as a private wrong or tort; but if it reaches beyond the individual and affects the community at large, it is a public wrong or crime, and will be redressed by government in a criminal proceeding. To constitute a private wrong, an action must be wrongful in itself, that is, not authorized by law; and it must result in actual or legal damage. The person whose rights have been invaded by a wrongful and injurious act may bring a civil action or suit before the proper court, requesting compensation for his injury.

161. **Procedure in Civil Cases.** The parties to a civil action are the plaintiff and the defendant. The plaintiff ~~Parties.~~ is the party who claims to have sustained the injury and who brings the action; and the defendant is the one against whom the action is brought.

The first step is the filing of the plaintiff's statement of the grounds of his suit, this being known as his declaration, ~~Pleadings~~ ^{and issue} complaint, or petition. The plaintiff must apply to the clerk of the court for a writ summoning the defendant to appear in court and meet the charges made against him. This summons is served on the defendant by

the sheriff or constable.¹ The clerk also issues a summons or *subpœna* to all witnesses whose testimony is desired by either party. The defendant then files his reply or answer, setting up any defense which he may have to the allegations made against him. The plaintiff may reply to this, and the defendant may then answer in turn until an issue is reached, that is, "some specific point of law or fact affirmed on one side and denied on the other."

As a rule either party in a civil case may demand a trial by jury,² which generally consists of twelve citizens. The method of selecting a jury is carefully regulated by law, and by "challenges" either party may secure the rejection of objectionable persons.

After the selection of the jury, the plaintiff's counsel states the nature of the case as set forth in the declaration, and outlines the main facts which he expects to prove. The plaintiff's witnesses are next examined orally, the defendant being given an opportunity to cross-examine each witness after his direct testimony has been given. When the plaintiff's case has been presented, his attorney announces that he "rests." The defendant's attorney then outlines what he proposes to prove and introduces his evidence, at the close of which the plaintiff has an opportunity to introduce rebutting testimony. Only that evidence is admissible which, in the opinion of the judge, is material and relevant to the case. When the testimony is closed, the cause is argued to the court and jury by the counsel for each side, the plaintiff's counsel opening and closing.

Throughout the trial the judge decides what evidence may properly be presented to the jury, and after the closing argument, it is his duty to instruct them on the points of law involved in the case. Either party may move for particular instructions, the grant-

¹ At the time required in the summons the defendant must plead, or judgment by default may be taken against him.

² In equity cases there is ordinarily no jury, and any civil case may be tried without a jury if both parties consent.

Duties of
judge and
jury

Evidence
and
argument

ing or refusing of which by the court, if erroneous, may be taken advantage of by a bill of exceptions. After receiving their instructions, the jury retire for deliberation under charge of an officer of the court. Ordinarily their verdict must be unanimous; and if agreement is found impossible, they may be discharged by the judge, the cause then remaining for trial as if none had taken place. If they are able to agree, a verdict is rendered for the plaintiff or defendant; and after the verdict has been accepted by the court, judgment is rendered accordingly. If no appeal is taken from this judgment, it is enforced, if against the defendant, by a process called execution, which is an order of the court directing the sheriff (or constable) to see that the judgment is satisfied. Legal judgments are generally directed against the defendant's property, which will be seized and sold unless the plaintiff be paid the damages or compensation in money awarded to him. Judgments in equity are ordinarily directed against the person of the defendant, directing him to do or refrain from doing some particular thing.

The decision of the court is not always accepted as final.

Appeal or writ of error Under certain conditions the judge who tried the case will grant a new trial; or the dissatisfied party may carry the case up to the next higher court, either by appeal or writ of error.

162. Adjudging Legislative Acts Unconstitutional. In addition to the functions ordinarily performed by courts in all countries, American tribunals stand practically alone in the possession of a power which has greatly enhanced their dignity and importance. The American judiciary is the final and authoritative interpreter of the constitution. In every commonwealth the written constitution is the supreme and fundamental law to which all legislative acts must conform. The statute is the expressed will of the legislature; but the constitution is the expressed will of the people, and is therefore of higher legal authority. In their State constitution the people have

limited and defined certain governmental agencies, including the legislative, executive, and judicial departments, and have formally announced certain fundamental principles. Hence if the acts of any of these agents are in conflict with the will of the people as expressed in the constitution, such acts are null and void and may be so declared by the courts.

163. Principles of Constitutional Interpretation. In determining whether a legislative act is constitutional, courts are guided by certain fundamental principles of constitutional interpretation. One of the most important of these is, that the act must come before the court in the form of a concrete case — that is, there must be actual litigation between two or more parties in which the question of constitutionality arises.

Moreover, the question of constitutionality must be clearly presented to the court, and a decision upon the point must be necessary to determine the issue. The presumption is in favor of the validity of the act, and its unconstitutionality must be clearly shown before the court will set it aside. The motives of the legislature cannot be inquired into, nor can it be shown that the act was procured by fraud or bribery.

An act adjudged unconstitutional is null and void — it is, in legal contemplation, as inoperative as though it had never been passed. The decision of the court in the case is binding only upon the parties to the suit; but it establishes a precedent which will be followed if the same question is again presented to the court, and hence it furnishes a notice to all parties that the statute is to be treated as void and of no effect.

164. Judicial Control of Executive Officials. A second important characteristic of the American judiciary is the indirect control which it exercises over executive officials through its power to pass upon the legality of executive acts. Thus if a governor should

Concrete
case
essential

Statutes
presumed
to be valid

Effect of
unconsti-
tutional act

Executive
officials
amenable
to courts

illegally remove an official from office, the latter may bring an action against the governor in the proper court; and if it be shown that the officer was unlawfully removed, the court will reinstate him. Similarly, any citizen who is wronged by an executive act may bring suit against the offending officer in the ordinary courts, as he would against a private citizen.

American courts use freely their power to issue writs of *mandamus* in order to compel executive officers to do acts which it is their plain duty to perform, providing the act is one ministerial in its nature and not involving the exercise of official discretion. They also issue writs of *injunction* to prevent officials or private individuals from performing illegal acts.

165. Relation of State to Federal Courts. State and concurrent federal courts jurisdiction are entirely independent in the exercise of their respective powers. Their jurisdiction, generally distinct, in some cases

IN THE COURT OF COMMON PLEAS OF WEST MORELAND COUNTY, PENNSA.

SITTING IN EQUITY

No. 748 Equity.

Jamison Coal & Coke Company, a Corporation of the State of Pennsylvania, Plaintiff,

vs.

United Mine Workers of America, an Association Incorporated or Unincorporated, Marshall Marzolini, et al., Defendants.

DECREE

And now, June 1st, 1910, this case came on for hearing on motion to continue the preliminary injunction granted May 26th, 1910, until final hearing, and after the taking and hearing of all testimony presented, it is adjudged and decreed as follows:

That the United Mine Workers of America, an Association, Incorporated or Unincorporated, Marshall Marzolini, Charles Shaw, Joseph Littlewood and George Thompson, organizers, officers or members of said association, Christopher Columbus, John Morgan, John Marks, James Dinanore, John Luteraude, William Green, Joe Filletan, Elmer Harris, James Walker, William Haya, George Cushing, Joe Leinh, Joe Vedick, Nick Yardish, Stanley Begos, Frank Begos, Charles Kickler, John Franchic, Frank Checkers, Patrick Duffy, Patrick Galvin, Philip Duffy, H Brown, Patrick Curran, Tony Palo, Adam Shurkosky, Frank Basket, Anton Benitoski, George Conquash, Andy Conquash, Andy Surin, Joe Kurtz, John Lance, Lick Lance, Archie McKeaver, John Heasley, William Logan, Harry Heasley, George Ray, Jr., Lew Hawe, Jacob Heasley and James Cole, defendants, and all other persons who may at any time hereafter assemble with them or aid or assist them to the acts complained of in the bill in this case, be enjoined and restrained from conducting or engaging in marches to and past the mines, property and works of the Jamison Coal & Coke Company, and from assembling at or near the works of said company for the unlawful purpose complained of in this bill, and indicated by the testimony in this case; and it is further decreed that as a mode for the accomplishment of such unlawful purpose of intimidation, they be enjoined and restrained from establishing and maintaining camps upon the immediately adjacent lands of Ruffner's heirs or elsewhere in such close and immediate proximity of the plants and property of the complainant whereon to collect large bodies of men brought from other localities with a view and for the purpose of thereby intimidating complainant's employees who desire to work by any such display of hostile force, or by means of noise, threats of personal violence, opprobrious epithets addressed to said employees or any of them from that point, or by any other hostile and unlawful means whatsoever to operate on the fears of said employees, or to thereby interfere with complainants in the operation of their works. This decree to remain in force until final hearing and until the further order of the Court. Such of the defendants named in the bill as are not specifically named in this decree have not been shown by proof to have participated in the unlawful acts complained of in the bill, and therefore, the injunction as to them is discharged.

Attest: BY THE COURT

HARRY N. YONT,
Prothonotary

A PENNSYLVANIA INJUNCTION

overlaps. Many civil cases may be brought at the option of the plaintiff either in a State or federal court; or, when brought by the plaintiff in the State court, may be removed to the federal court by the defendant.

In any case tried in a State court, if the federal constitution, or a federal law or treaty is involved, and the decision is against the party claiming a right, title, privilege, or immunity under federal law, the case may be appealed for final decision to the Supreme Court of the United States. If the State court upholds the federal law, its decision is final.

166. Interstate Judicial Relations. The courts of the different States are entirely independent of each other, subject to the limitation contained in the federal constitution that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State."¹ Decisions of a State court constitute precedents of binding obligation only within the boundaries of the particular commonwealth. The decisions of courts of other commonwealths are constantly quoted in legal proceedings, but have no authority beyond the intrinsic value of their reasoning and conclusions.

No State court can summon before it witnesses who live in another State, since the legal process of the court is not effective beyond the boundaries of the commonwealth. In order to avoid this difficulty, all States permit testimony for use in civil cases to be taken outside their limits by deposition.

¹ *United States Constitution, Art. IV, Sec. 1.*

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QUESTIONS AND EXERCISES

1. Name the several grades of courts in your State, beginning with the lowest.
2. How many judges constitute the highest court? How are they chosen? Give their term of office, qualifications, and salary.
3. Where and when does the highest court hold its sessions? Name the judges.
4. Do all the judges of the highest court belong to the same political party? Has any attempt been made in your State to secure a non-partisan judiciary?
5. Answer questions in 2 concerning judges of the lower courts.
6. How may a judge be removed from office in your State?
7. What is the number of the judicial circuit (or district) in which you live? What territory does it include? Name the judges.
8. Is there a court in your State corresponding to the probate court described in Section 155? If so, what cases are tried in it?
9. If you live in a large city, what special courts exist there?
10. Do you favor appointment or election of judges? Short or long terms? Give reasons.
11. Describe the kind of man who you think would make a good judge.
12. In what court would you sue a man for a debt of \$20? For a debt of \$2000? In what court would a man accused of murder be tried? A man accused of violating a speed ordinance?
13. What are the advantages and defects of trial by jury?
14. Visit the courthouse when court is in session, and write a description of the court-room and the trial.
15. Suggested readings on the State judiciary: Kaye, P. L., *Readings*, pp. 311-328.

CHAPTER XII

THE POLICE POWER

167. Definition of the Police Power. The police power is the governmental power to make all laws necessary to preserve and protect the public peace, public ^{what is} safety, public health, and public morals.¹ It is universally conceded to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance.² For example, under this power government may order the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the regulation of railways and other means of public conveyance; the suppression of gambling and the liquor traffic; and the confinement in hospitals of the insane or those afflicted with contagious disease. Even beyond this, government may interfere wherever the public interests demand; and hence a large discretion is vested in the legislature to determine what the interests of the public require, and the measures necessary for their protection.

168. General Characteristics of Police Power. It is essential to free government that individual rights be secured against governmental tyranny; but since ^{nature} rights guaranteed to individuals may be abused ^{and origin} by them to the detriment of the community as a whole, it is likewise essential that the public welfare be secured against individual selfishness. No one should be permitted to make such use of his personal or property rights as to interfere with a reasonable enjoyment by others of similar rights. Thus the police power has its origin in the

¹ "This police power of the State extends to the protection of the lives, health, comfort, and quiet of all persons, and the protection of all property within the State." — Thorpe v. Rutland and Burlington Railroad Company, 27 Vt. 140; Thayer's Cases, 1, 709.

² Lawton v. Steele, 182 U. S. 188; Thayer's Cases, 1, 810.

principle "*salus populi suprema lex*" (regard for the public welfare is the highest law). Every person has a right to the free enjoyment and disposal of his property; but if a man living in a populous community erects a slaughter-house on his premises, or engages in the manufacture of deadly explosives, such use of his property would be adjudged a nuisance because dangerous to the public health or safety; and would be prohibited by government through the exercise of the police power. Thus in its practical application, the police power proceeds upon the principle that each must so use his own as not to injure another ("*sic utere tuo ut alienum non laedas*").

So essential is this power to the public welfare that the courts have declared that it cannot be surrendered by the ~~Police power~~ legislatures. It is a part of governmental power, ~~Inalienable~~ and "the power of governing is a trust committed by the people to the government, no part of which can be granted away."¹ Even through contracts founded upon a valid consideration, legislatures cannot so limit the discretion of their successors that they may not enact laws necessary to protect the public safety, public health, or public morals.

The police power is distinct from eminent domain. Eminent domain is an appropriation of private property ~~Distinct from emi-~~ to the use of the public; while the police power ~~domain~~ regulates or destroys private property in the hands of its owner. When the right of eminent domain is exercised, proper compensation must be made to the owner; but where property depreciates in value or is destroyed through the exercise of the police power, the owner is not entitled to compensation.²

¹ *Stone v. Mississippi*, 101 U. S. 14; *Thayer's Cases*, II, 1771. In this case the court sustained the provisions of the Mississippi constitution of 1869 prohibiting lotteries, and a statute of 1870 enforcing these provisions, as against a corporation chartered in 1867 with authority to carry on the business of a lottery for twenty-five years. The prohibition was held a valid police regulation tending to promote the public morals.

² Thus capital invested in breweries may be greatly depreciated in value through the adoption of a State prohibition law, but the owners are without redress. Such was the decision in *Mugler v. Kansas*, 125 U. S. 623; *Thayer's Cases*, I, 703.

169. Scope of the State's Police Power. While the police power of the national government is narrowly limited in its scope and extent,¹ that of the States is full and complete except as limited by express provisions of the federal or State constitutions. Municipalities within the commonwealth also possess limited police powers delegated by the State government, to be exercised through municipal ordinances; but the police power of municipalities is subordinate to the general police power of the State government, and may be controlled or abrogated by the latter.

In exercising the police power, both the State and federal governments are limited by certain important principles designed to prevent its abuse. (1) State laws in exercise of this power must not violate any provision of the federal or State constitution. (2) State legislation must not interfere with the exclusive jurisdiction conferred upon Congress over certain subjects. (3) State and federal measures passed in the exercise of this power must not be unreasonable, discriminating arbitrarily against individuals or classes, or invading private rights unnecessarily; but must be based upon one of the grounds for which the police power may be exercised, and be reasonably adapted to that purpose.²

The principal subjects concerning which the police power of the State is exercised include: (1) the maintenance of the public peace and order; (2) the pre-

¹ Congress has no general power to make police regulations; but in the exercise of powers expressly granted, and as to subjects over which it has exclusive jurisdiction, Congress may enact measures of public police. Examples are the federal statutes providing for the punishment of treason and the suppression of insurrection or rebellion, excluding from the mails lottery advertisements, fraudulent and other objectionable matter; prohibiting trusts and combinations in restraint of trade; establishing a national quarantine; and regulating immigration.

² A State police regulation held invalid as interfering with federal control of interstate commerce was the prohibition law of Iowa, forbidding the sale in that commonwealth of intoxicating liquors in original and unbroken packages imported from another State. The Supreme Court of the United States declared this law unconstitutional, holding it to be an invasion of the exclusive control by Congress of interstate commerce. (*Lemly v. Hardin*, 135 U. S. 100; *Thayer's Cases*, II, 2104.) This decision would have made it impossible to enforce State prohibition laws had not Congress promptly passed the Wilson Act, providing that when liquor is imported into a State it becomes subject to the police power of the commonwealth in the same manner as domestic articles of a similar nature.

servation of the public safety; (3) the promotion of the public health; and (4) the protection of the public morals.

170. Maintenance of Public Peace and Order. Maintenance of the public peace and order is essential to the very existence of the State. Hence government may enact laws necessary to the performance of its functions; it may define crimes and punish criminals; establish courts and regulate civil and criminal procedure; provide for sheriffs, jails, and penitentiaries; prevent and suppress unlawful assemblies and riots; and in general do all things necessary to maintain law and order throughout the commonwealth.

Every citizen owes to the community implicit obedience to the laws and to the regularly constituted authorities; and upon the orderly spirit characteristic of most citizens, government largely relies for the preservation of the public peace. The official agencies charged with the special duty of enforcing laws are: first, the local police force, consisting of policemen in the cities, and constables in the rural districts; and second, the sheriff, who is both the executive officer of the courts, and the general conservator of peace throughout the county. The sheriff has power to appoint deputies, and if necessary may summon to his aid a *posse*.¹

Under ordinary circumstances these local forces are adequate to suppress lawlessness; but if the civil authorities are unable to cope with the disturbance, the governor, ordinarily upon request of the county sheriff, will order the State militia to the scene. If even the militia are unable to suppress the disorder, the State legislature or the governor (if the legislature is not in session) may apply to the President, who can use the whole military power of the federal government to suppress the outbreak. If the violence is so great as to interfere with

¹ In theory, the *posse comitatus*, or county force subject to the sheriff's summons, includes all able-bodied men within the county.

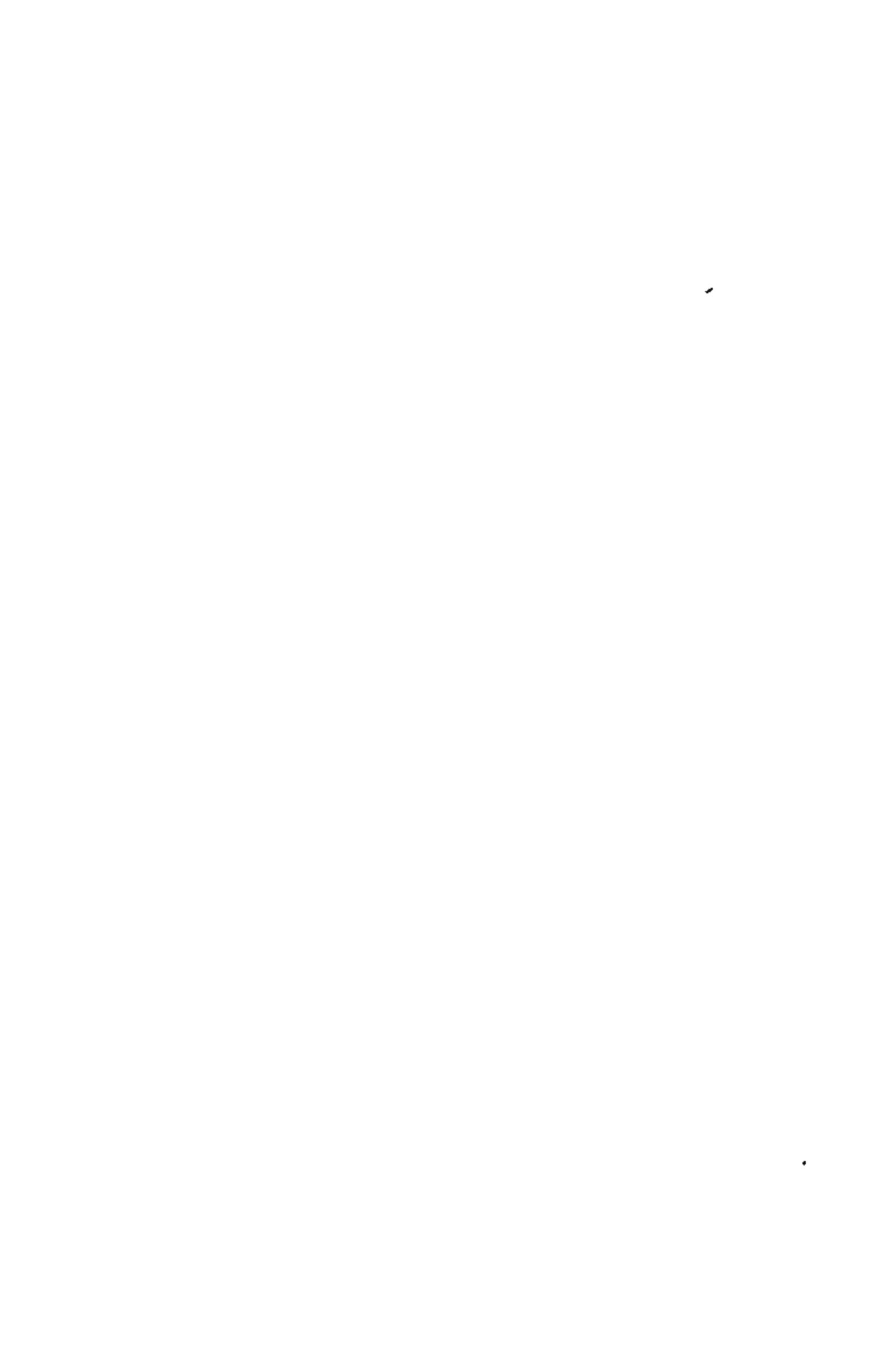


ARMORY OF THE STATE MILITIA
At Medford, Mass.



POLICE PROTECTION DURING A STRIKE
A number of wagons, each guarded by a squad of policemen. The occasion was
a teamster's strike in a large city.





the execution of the functions of the federal government, as the transmission of the United States mails, the President may send federal troops to the scene without the request, and even contrary to the desire, of the State authorities.

Thus the immediate purpose of the militia is to act as a sort of State police force on which the governor may call in case of serious riots or insurrection. Under an ~~militia~~ act of Congress, the militia liable to be called out by the President consists of all able-bodied male citizens between the ages of eighteen and forty-five, an aggregate of over twenty-two million men. This entire number consists of two classes: the organized militia, a force of about 450,000 men (known as the national guard and the naval militia); and a vast force of reserve militia, including all able-bodied citizens between the ages of eighteen and forty-five years, called upon only in time of great emergency.

The national guard is in no sense a standing army, but rather a citizen soldiery. Enlistment is voluntary, and is for a term of six years, the last three in the ~~national guard~~ ^{The national guard} reserve. Until lately each State followed its own rules concerning the organization and control of its own troops. But by the national defense act of 1916, provision was made for federalizing the militia of the several States, and for drafting it into the general service.

Congress prescribes the rules for the organization, armament, and discipline of the militia; and these are now the same as for the regular army. The militia may be called into the service of the United States in ^{Regulations concerning militia} order to execute the laws of the Union, suppress insurrection, and repel invasion. Except when called into the federal service, the commander-in-chief is the governor, assisted by his military staff, at the head of which is the adjutant-general. Other officers are appointed by State authorities, or elected by the men.

171. Preservation of the Public Safety. One of the principal objects for which the police power may be exercised **Regulations** is the preservation of the public safety. Under this head are included the numerous statutes regulating steam and electric railways;¹ prohibiting the keeping of explosives in dangerous quantities; forbidding the carrying of concealed weapons; prohibiting the sale of poisonous drugs unless labeled poison; requiring the muzzling of dogs; providing that electric light wires in cities be laid below the surface of the streets; regulating the general use and care of streets and sidewalks; and establishing building regulations.²

172. Promotion of the Public Health. Of the highest importance are the laws and regulations designed to **Public health boards** promote the public health of the community by maintaining good sanitary conditions, and by preventing the spread of contagious or infectious disease. Control of public health is left primarily to local health boards or officers of the cities, townships, and counties; but in nearly every commonwealth there is a State board or department having general supervision over conditions affecting the public health, with some degree of control over local boards and officers.

In order to protect the public health, governments generally forbid the use of surface wells in cities; establish **Health regulations** quarantine regulations, as the exclusion from the State or the destruction of diseased cattle; prohibit the sale of unwholesome provisions and adulterated food products; provide public hospitals and require the removal thereto of persons afflicted with dangerous contagious or infectious diseases; make regulations for the proper burial of the dead; and adopt such other rules as are necessary to

¹ For example, requiring the erection of fences and cattle-guards, the safeguarding of railway-crossings, the use of spark-arresters, of signal and switching devices, of brakes and automatic couplers, regulating the speed of trains in cities, requiring the maintenance of suitable depots and waiting-rooms for passengers, and prescribing tests of competency for engineers and conductors.

² For example, prescribing the maximum height of buildings, the strength of foundations and walls, character of the plumbing, and the number of exits and fire-escapes.

protect the general health of the community. The liquor and cigarette traffic may also be regulated or entirely prohibited by the legislature as dangerous to the public health.

173. Protection of the Public Morals. The object of legislation in protection of public morality is not to set up a standard of morals to which each person must conform, the private character of the individual being a matter for his own conscience and the moral law. But government does have regard to the general moral health of citizens, just as to their physical health, and hence prohibits certain conduct which tends to lower the general moral tone of the community. On this ground statutes have been upheld punishing blasphemy; requiring the cessation of all ordinary business and employment on Sunday;¹ prohibiting gambling and other immoral amusements and entertainments; suppressing lotteries; and forbidding acts of cruelty to animals.

Public and
private
morality

174. Miscellaneous Examples of the Police Power. Four important subjects of the exercise of the police power deserve special consideration, being justifiable upon one or more of the above grounds of public safety, health, or morality. These are: (1) the regulation of trades, callings, and occupations; (2) regulation of labor; (3) regulation of charges and prices; and (4) regulations to prevent frauds and oppression.

175. Regulation of Trades, Callings, and Occupations. The general principle is that one may engage in any lawful occupation or employment; but the commonwealth may regulate the conditions under which employments may be carried on, and forbid those which it deems prejudicial to the public good. Legislation concerning occupations and employments is usually for one of three purposes: (1) Certain occupations, as the liquor traffic and gambling, are deemed inherently vicious and immoral, and may be regulated or entirely prohibited. (2) Other callings (as the

¹ Sunday regulations are now generally sustained as necessary to the public health, rather than on moral grounds.

business of ticket-scalping), while not inherently immoral, may be forbidden as against public policy; and other proper occupations may be regulated (as the business of pawnbrokers and junk-dealers); or altogether prohibited under conditions likely to render them a public nuisance (as slaughter-houses in cities). (3) Finally, there is a large class of occupations and professions where the safety, health, or property of the public is directly dependent upon the possession of special knowledge and skill on the part of those who practice them; and hence government may restrict such callings (as those of law, medicine, teaching, pharmacy, plumbing) to persons who can pass prescribed examinations designed to test their qualifications.

176. Regulation of the Liquor Traffic. Regulation of the manufacture and sale of intoxicating liquors has always been held a valid exercise of the police power, ^{License system} justifiable on all three grounds of public safety, health, and morality. At first most of the States attempted to regulate the liquor traffic by means of the license system. Under this plan, the State taxed each saloon a sum varying in different commonwealths from \$50 to \$1200 a year. The advantages of a high-license system are that it lessens the number of saloons and the amount of liquor sold, and forms a productive source of revenue. Against the plan it is urged that it makes the State a partner in the evils of the traffic.

A second method of dealing with the liquor traffic is by local option, or prohibition within local areas upon the ^{Local option} affirmative vote of a majority of the electors.

Under this plan, the voters of a county, township, village, or city (or ward or other district within the city), are allowed to determine whether or not the prohibition law shall be applied to that particular area of the commonwealth. Local option has the great advantage of resting the policy concerning temperance upon the approval of the local community; and upon local approval temperance laws must largely depend for their sanction and support.

Before the adoption of national prohibition, thirty-one States had State-wide prohibition; that is, the manufacture and sale of intoxicating liquors was prohibited ~~State-wide~~ throughout the entire State (generally, by means ~~prohibition~~ of a constitutional amendment). It is true that in much of this prohibition area, liquor was sold illegally. Nevertheless, State prohibition placed the stamp of public disapproval upon the liquor traffic; and it banished the open saloon with its dangerous allurements.

The prohibition movement gained great momentum in the years 1916-1917, when many additional States swung into the dry column. Moreover, Congress passed a war prohibition measure, forbidding the manufacture and sale of all intoxicating beverages after July 1, 1919. Finally, the supporters of prohibition were able to secure the ~~National~~ ~~prohibition~~ necessary two-thirds vote in Congress for the submission to the States of a constitutional amendment calling for national prohibition. This eighteenth amendment received the ratification of the necessary thirty-six States in January, 1919. It prohibits the manufacture, sale, or transportation of intoxicating liquors within the United States. Congress promptly passed a Prohibition Enforcement Act, commonly called the Volstead Act, declaring all liquors containing more than one half of one per cent of alcohol to be intoxicating, and hence prohibited. The duty of enforcing this measure is vested primarily in the Commissioner of Internal Revenue, although it likewise rests upon State and local officials.

177. Regulation of Labor. State regulation of labor is justifiable if necessary to protect the safety, health, or morals of the laborers themselves, or of the general public. Regulations of this kind commonly restrict the employment of women and children in factories and mines; provide for the safety of employees by requiring the inspection of elevators and boilers, and the fencing of dangerous machinery; safeguard the health of laborers by prescribing the minimum floor space and air supply per individual; and regulate the

manufacture and sale of articles made in tenements. These provisions are generally enforced by a State department of labor in charge of a commissioner or inspector.

Within recent years, many States have passed Workmen's Compensation Acts, under which laborers who are injured

Workmen's Compensation Acts in the course of their employment may receive compensation without bringing suit in the courts for damages.

The essential principle of the compensation laws is that an employee who suffers an injury while engaged in his occupation shall be entitled to a payment proportioned to the nature of his injury. In some States the amount of the payment for the different industries is specified in the law; in others, a State Industrial Commission fixes the compensation under general rules laid down in the act.

178. Regulation of Charges and Prices. Under the modern principle of freedom of contract, the rate of wages and Present theory the prices of commodities are ordinarily left to private arrangement between the parties concerned. But under some circumstances, prices may be controlled by law in the exercise of the police power. Thus where a corporation undertakes a public employment,¹ as the transportation of passengers and freight, and receives special privileges which only government can confer (as the power of eminent domain), the prices charged may be regulated in the interest of the public so as to prevent unreasonable and exorbitant charges.² Instances of business "affected with a public interest" and therefore subject to reasonable regulation are: the business of railroads and other common carriers, including hackmen, draymen, and public ferrymen; also that of public millers, hotel-keepers, and warehousemen.

179. Regulations in Prevention of Frauds and Oppression. Limitations are often placed upon freedom of contract

¹ Corporations of this kind are usually called *quasi-public* or public-service corporations, because of the public nature of their business.

² *Munn v. Illinois* 94 U.S. 113, Thayer's Cases 1, 743.

in cases where because of special circumstances the parties are not on an equal basis, one of them lacking real liberty of action. Illustrations are the usury laws, and statutes designed to protect minors and insane persons in their business dealings.

Regulations designed to protect the public against fraud and oppression are those providing for inspection of weight and measures; regulating the weight of bread in a loaf; prohibiting trusts, corners, pools, and other combinations in restraint of trade and designed to create a monopoly; and forbidding boycotts and other coercive measures which interfere with the rights of persons or property.

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QUESTIONS AND EXERCISES

1. What authorities have charge of the maintenance of public peace and order in your community? How are these officers chosen? Term? How removed?
2. Give instances of important health regulations adopted by your local health department.
3. Give instances of occupations or callings which are unlawful in your commonwealth. Of other occupations which, while not entirely prohibited, are subject to a large degree of police regulation.
4. Give some of the most important provisions adopted by your commonwealth in regulation of labor.
5. What restrictions has your State placed upon the employment of women and children in factories and mines? What is the object of such regulations? Who enforces them?
6. Have you a State board of arbitration for the settlement of labor disputes? Has it been successful in adjusting such controversies?
7. What is meant by a strike? Lock-out? Boycott? Picketing? What can you say of the legality of these methods of industrial warfare?
8. Explain how a strike affects many more people than the employer and employees in the particular industry.
9. Give examples of industries in which the prices or charges are regulated by law in order to protect the public.

CHAPTER XIII

CRIME AND ITS PUNISHMENT

180. Wrong-Doing in Early Society. In the early stages of society, private retribution was the sole remedy for wrongs. If an individual suffered injury, retaliation became the duty of his family or tribe. Organized revenge thus became a social institution, and even in modern times has survived in some backward regions as the "blood-feud."¹ Gradually retaliation was somewhat checked by a system of compensation for injuries through the payment of money or goods — from which the modern system of fines has been derived. With the evolution of the state, government soon assumed the function of arbitrating private controversies and of redressing injuries. Wrongs were no longer a matter of private vengeance, but were redressed through the courts by means of civil and criminal procedure.

181. Classification of Wrongs. The wrongs for which modern governments afford redress are of two classes: private wrongs or torts, and public wrongs or crimes. Torts may be defined as offenses primarily against individual rights, for which the person injured may bring a civil suit for damages or ask protection through an injunction;² while public wrongs or crimes are offenses so injurious to society as a whole that government itself, through a criminal proceeding, enforces the penalty. Some actions, properly designated as sinful or vicious, are neither civil nor criminal offenses — in other words, the law does not seek to prevent all wrongful acts. On the other hand,

¹ Duels, and in a measure lynchings, are survivals of the earlier status.

² The procedure in civil cases has been described in Section 161.

acts which in themselves do not involve moral turpitude are sometimes declared criminal; for example, driving on the left-hand side of a bridge. Thus only those acts are crimes which are so declared by law.

182. The Definition of Crime. A crime may be defined as an act forbidden by law as injurious to the public, and which government prosecutes and punishes in its ^{variable} own name. What acts are declared criminal de- ^{in nature}pends upon the common beliefs and convictions of men as reflected in their laws and institutions. Thus crime varies among different nations and in different periods of history; acts regarded as heroic in one age may be considered criminal in another, and *vice versa*. In the last analysis the definition of crime is the product of public sentiment in a particular society;¹ and upon the same public sentiment criminal laws practically depend for their enforcement.

183. Classification of Crimes. The legal classification of crimes is based upon the nature of the punishment, and includes three grades: treason, felonies, and mis- <sup>Treason,
felonies,
and mis-
demeanors</sup>demeanors. Treason is a crime aimed at the government itself, and consists in levying war against the United States, or adhering to its enemies, giving them aid and comfort. Felony includes all the more serious crimes punishable either by death or by imprisonment in the penitentiary;² while misdemeanors are offenses of a minor nature, punishable by fine or imprisonment in the county jail or workhouse.

With reference to the nature of the criminal act, crimes may be classified as (a) offenses against government, as treason and bribery; (b) offenses against public order, as riot and conspiracy; (c) offenses against public health, as nuisance; (d) offenses against religion, morality, and decency, as blasphemy; (e) crimes

<sup>Another
classifica-
tion</sup>

¹ Criminality "consists in a failure to live up to the standard recognised as binding by the community." — Ellis, H., *The Criminal*, p. 450.

² At common law, felony included those crimes whose punishment involved forfeiture of the criminal's lands and goods, and for which the death penalty might also be inflicted.

against the person, as assault or robbery; (f) crimes against the dwelling-place, as arson and burglary; (g) crimes against property, as larceny and forgery; (h) maritime offenses, as piracy.

184. The Causes of Crime. The numerous factors which produce crime may be grouped into three great classes: **Analysis of factors** physical, social, and individual. (1) The physical or cosmic factors affecting crime are climate and the variations of temperature. (2) Social factors are the political, economic, and social conditions under which men live; e. g., poverty, density of population, industrial depressions, lynching, corrupt politics, influence of evil associations, and of injurious theories and beliefs. (3) Individual factors of crime are those attributes inherent in the individual himself, as sex, age, education, occupation, and alcoholism — forces whose ultimate product is sometimes hereditary or individual degeneration. The science which treats of the nature and various causes of crime, known as criminology, has been of especial value in suggesting possible methods of prevention.

185. The Repression of Crime. Among the important means which society has provided for dealing with crime **Repressive agencies** are the public police force, whose special duty is the prevention and detection of crime and the arrest of criminals; the system of courts and criminal procedure for the determination of the guilt of accused persons; and the various types of penal institutions for the punishment of convicted criminals. In the United States these agencies are provided chiefly by the individual commonwealths, the federal government having jurisdiction only over limited classes of crimes.¹

186. First Steps in a Criminal Action. The various steps **Warrant and arrest** in a criminal proceeding are designed to safeguard the social welfare, while at the same time protecting the rights and liberty of the individual. As a general

¹ See chapter xxxv.

rule, the person supposed to be an offender is arrested in pursuance of a warrant, that is, an order issued by a proper magistrate and addressed to an officer directing him to arrest the person named. But either an officer or a private individual may arrest without warrant under certain circumstances; for example, if a crime is being committed in view of the person who apprehends the criminal.

The next step is the examination before a court having original jurisdiction over the offense. In case of felonies this is generally a preliminary step to ascertain whether there is reasonable cause to hold the accused to await the action of the grand jury; and if guilt seems probable, or if the accused waives examination, he is committed to jail by a *mittimus*,¹ or released on bail.² But in case of misdemeanors, magistrates often have summary jurisdiction, and at once proceed with the trial, render a decision, and assign a penalty.

187. Framing a Formal Accusation. Most State constitutions as well as the federal constitution provide that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury." The grand jury is a body of citizens (usually twenty-three) chosen from the people of the county for the purpose of inquiring into offenses committed therein. The public prosecutor lays before this body the information or complaint, together with the evidence in its support. If a majority of the grand jury believe the evidence sufficient to warrant putting the accused person on trial, their foreman indorses on the indictment "a true bill," whereupon it is returned to the court in order that the defendant may be tried. If the evidence

Indictment
or present-
ment

¹ If there is reason to suppose that a person has been illegally committed to jail, he is entitled to a writ of *habeas corpus*. This is an order issued by the judge commanding that the person held be brought before the court in order that it may be judicially determined whether he is legally detained.

² Bail is the delivery or bailment of the arrested person to certain sureties, upon their giving sufficient security for his appearance in court. The amount of the bond varies with the enormity of the offense charged.

does not appear sufficient, the accused has a right to discharge, but may be subsequently indicted by another grand jury. In addition to cases brought before it by the prosecutor, the grand jury may inquire into offenses which have come to their own notice, and if the evidence warrants, may render a presentment or formal accusation, whereupon the court generally orders an indictment to be framed.

In States whose constitutions do not require indictments or presentments, prosecutions are usually initiated by means ^{The} ~~information~~ of an information or written accusation presented ~~information~~ under oath by the public prosecutor to the court having jurisdiction of the offense charged. Both the information and the indictment must set forth all the essential elements and circumstances of the offense, so that the accused may know the nature of the crime charged, and be prepared to offer evidence in his defense. In case the person against whom the indictment or information is found has not been arrested and brought before the court, a warrant known as a process is issued for his apprehension.

188. Arraignment and Trial. The next step is arraignment. Before the bar of the court in open session the indictment or information is read to the accused, and he ^{The} ~~plea~~ is asked to plead guilty or not guilty to the accusation. If he stands mute and refuses to answer the arraignment, the court will order a plea of not guilty to be entered. A plea of guilty amounts to a waiver of the trial, and the court may forthwith decree judgment. If the accused pleads not guilty, his attorney may under certain circumstances object to the jurisdiction of the court, demur, offer plea in abatement or in bar; or he may proceed with the trial of the issue.

The trial is the legal investigation of the issues created by the prosecution and the plea. Constitutional provisions commonly secure the right of the accused: (1) to be admitted to reasonable bail;¹ (2) to have a copy of the ac-

* Except for capital offenses where the guilt is evident or the presumption great.

cusation against him; (3) to be heard by himself and counsel; (4) to meet the witnesses face to face; (5) to have compulsory process for obtaining witnesses in his favor; (6) to have a speedy public trial before an impartial jury; and (7) not to be twice placed in jeopardy for the same offense.

The petit jury is a body of twelve citizens legally selected from the people of the county, and duly impaneled and sworn to try the issue between the government ^{The petit jury} and the accused. Before the jury is sworn, both the prosecution and the defense may object to any individuals who, for valid reasons, ought not to serve,¹ and a certain number of peremptory challenges is also allowed.

When the jury have been sworn, the indictment and plea are read to them, and the trial begins. The various steps include the introduction of evidence, the arguments of counsel, the charge of the court, the deliberation and verdict of the jury, and the judgment. Two of the most important rules of evidence in criminal cases are that the accused is always presumed to be innocent until he is proven guilty; and that the prosecution must prove affirmatively, and beyond a reasonable doubt, every material allegation in the indictment. The accused has the right to testify in his own behalf, but is protected by constitutional provision from being compelled to do so.² In criminal cases the verdict of the jury must be unanimous.³ If after due consideration the jury cannot agree upon a verdict, they may be discharged and the accused remanded for another trial. If the verdict is an acquittal, the accused is immediately discharged; if it is one of conviction, the accused may under certain circumstances immediately file a motion for a new trial or in arrest of judgment.

¹ Any juror who states that he has formed an opinion about the case is incompetent to serve, provided he would not be able to try the case fairly on the evidence presented.

² But if he voluntarily goes on the stand he may be cross-examined like any other witness.

³ Except that in a few Western States a verdict of nine or ten out of the twelve jurors is allowed in some cases.

If neither of these motions is made or if, having been made, it is overruled, the court proceeds to judgment.

Judgment This is an order directing the kind and measure of punishment to be inflicted on the accused, in conformity with the laws prescribing penalties for such offenses. Unless stayed by error proceedings or reprieve, or prevented by pardon, execution of the judgment follows; and this consists in the infliction upon the offender of the punishment imposed by the court.

189. The Theory of Punishment. In the early stages of society, and indeed throughout the greater part of the

Early and modern theories world's history, the object of punishment was retaliation — a life for a life, an eye for an eye,

a tooth for a tooth. The crime of murder is still generally punished on this principle, although the tendency is toward the abolition of the death penalty.¹ But the prevailing theory of punishment is not retaliation, but rather the protection of society, and if possible the reformation of the offender. By inflicting punishment, society endeavors to protect itself against criminal acts by awakening a wholesome fear of their consequences. History proves that severity of penalty alone will not solve the problem; and hence effort is now made to provide punishment of such character that it may reform the offender, and ultimately fit him for the life of a trustworthy citizen.

Fines or imprisonment, or both, are the penalties commonly inflicted; and these vary greatly in severity through-

Common punishments out the Union, even for the same offense. Laws defining crimes usually prescribe a maximum and minimum penalty, the exact punishment within

these limits being left to the discretion of the trial judge. Imprisonment is generally for a fixed period which may be reduced by good behavior; but several commonwealths have adopted the indeterminate sentence under which the

¹ Capital punishment has been abolished in Maine, Rhode Island, Michigan, Wisconsin, and Kansas.

criminal is not sentenced for a fixed term, but only until his conduct shows that he is fit for liberty.

190. **Places of Imprisonment.** Places of imprisonment comprise lock-ups or police stations, jails, work-houses, reformatories, and prisons or penitentiaries. Lock-ups and police stations are used for the detention of arrested persons pending immediate trial before the proper magistrate. Jails are county institutions intended primarily for the detention of persons awaiting trial; but they are often used for the punishment of offenders sentenced to a short term of imprisonment, notwithstanding this practice in effect provides a school for crime.¹ Work-houses are local institutions used for the punishment of minor offenses; reformatories are intermediate prisons for the punishment of juvenile offenders; and penitentiaries or prisons are provided for the incarceration of convicted felons.

191. **The Treatment of Criminals.** The importance of classifying criminals with a view to their possible reformation is now generally recognized; and accordingly prisoners are generally classed as juvenile offenders, reformatory cases, and incorrigibles. With the object of encouraging industry and good conduct within the prison, most penitentiaries have a system of marks and grades, promotion from a lower to a higher grade depending upon the number of marks earned. Obedience to the orders of officers and the rules of the prison, performance of assigned tasks, and upright conduct form the basis of the marking system; and by good behavior it is possible for the convict to shorten materially his term of imprisonment.

Labor is recognized as of the highest value in the treatment of prisoners, the four common systems of prison labor being the lease system, the contract system, the piece price plan, and the public account system. Under the widely used public account plan, government

¹ Owing to the fact that prisoners of all grades and ages are often placed together with no provision for useful employment.

furnishes the plant and raw materials, and the business of manufacturing is carried on under the direction of prison officers. The industries are diversified as much as possible in order to adapt them to the occupations and training of the convicts, and in order to reduce the effects of competition with free labor. In many commonwealths prison labor is devoted largely to the manufacture of goods used in the various State institutions.

192. **The Prevention of Crime.** Inasmuch as the majority of convicts are unskilled laborers, the best organized penal **Preventive methods** institutions provide trade and technical education for their inmates, with the object of qualifying them for useful employment upon their discharge. In many other ways society now aims at the prevention of crime instead of relying solely upon repressive measures. These preventive methods include careful registration of criminals by the Bertillon method; employment bureaus to secure work for discharged prisoners; increased efficiency of police systems; improved systems of poor relief; checks upon the hereditary supply of criminal stock; the removal of the social causes of crime (as defective economic conditions); and finally, the improvement and adaptation of educational systems, especially by enlarging the facilities for trade and technical training.

193. **Treatment of Juvenile Offenders.** In recent years there has been great progress in the social treatment of **Reform stories** juvenile offenders, most of whom need training rather than punishment. Special provision is now made for the care of such cases in industrial and reform schools, and in well-organized reformatories. The reformatories at Westboro, Massachusetts, Lansing, Michigan, and Lancaster, Ohio, are model institutions of their class; and excellent results have been obtained by means of the industrial and academic education which they supply, aided by the principle of the indeterminate sentence.

The latest development in the treatment of youthful

offenders is the establishment of special courts for the trial of juvenile delinquents, the judges commonly ^{Juvenile Courts} having wide discretion over the disposal of such cases. Special probation officers are also employed for the supervision of delinquent, dependent, and neglected children in the numerous cases where institutional treatment does not seem expedient. These officers act under the direction of the juvenile court in the commonwealths having this institution.

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QUESTIONS AND EXERCISES

1. Are there any provisions in your State constitution concerning crimes or punishment?
2. What is a felony under the laws of your State? Name several crimes which are felonies.
3. In your community what court has jurisdiction over misdemeanors? Over felonies?
4. Describe the first steps in a criminal action under the laws of your commonwealth.
5. How is the grand jury chosen? Of how many men does it consist? Describe the process of rendering an indictment or presentment.
6. Describe the remaining steps in a criminal action in your county (arraignment, trial, judgment).

7. Explain the importance of jury trial to one accused of crime.
8. What is the method of selecting petit jurors in your county? Can you suggest a better method?
9. Visit the courthouse and observe the steps in a criminal trial. Write a report of the proceedings.
10. Enumerate the safeguards in your State constitution designed to secure the rights of accused persons.
11. Is the principle of the indeterminate sentence applied in your commonwealth?
12. Are those who have been convicted of a felony permitted to vote in your State?
13. Give arguments for and against capital punishment.
14. Classify the various places of imprisonment in your State. What class of offenders is sent to each?
15. What industries are carried on in your State penitentiary? Explain the advantages to the State and to the prisoners of keeping the latter employed at useful labor. What arguments are sometimes urged against prison labor?
16. Is there a reformatory in your State for youthful offenders? If so, write a brief account of it.
17. What industrial or reform schools are there in your State? Are they accomplishing good results?
18. Is there a juvenile court in your community? If so, describe its work, and that of the probation officers.
19. Prepare a brief report on the treatment of criminals in colonial times. (McMaster, *History of the American People*, I, pp. 93-102.)
20. Suggested readings on criminal procedure: Kaye, P. L., *Readings*, pp. 316-334.

CHAPTER XIV

PUBLIC CHARITIES

194. Relation of Government to Charity. In early times the relief of the destitute and helpless members of society was left chiefly to the church and to private philanthropy; but to-day in the more progressive countries the care of the dependent and defective classes is a clearly recognized function of government. The aim of public charity is the relief of those suffering from poverty and disease; and at the present time special effort is made to discover and remove the causes of distress, rather than merely to minimize the results of bad conditions.¹

Actual administration of public charities is entrusted primarily to local areas — to the towns in New England and the Middle States, to the counties in the South, and in the Central and Western States to one or both of these divisions. The larger cities frequently have a system of poor relief separate from that of the counties in which they are situated.

In many commonwealths the work of local authorities is subject to a greater or less degree of central supervision by a State board of charities. Generally this is merely an advisory body with power to inspect, investigate, and make recommendations to the governor or legislature (as in New York, Massachusetts, California, Indiana). In several commonwealths² the State board is one of control, with power to appoint the superintendents of charitable institutions, inspect the construction of asy-

¹ The effort to ascertain causes is characteristic of private, rather than of public charity.
² Minnesota, Iowa, Kansas, Ohio, Illinois, Rhode Island, and Wisconsin.

lums and poor-houses, and in general to administer the charitable system of the State.

195. The Causes of Poverty. Various theories have been advanced by economic writers to account for the fundamental causes of poverty. Thus some economists, ~~Malthus, George, and Marx~~, following the teachings of Malthus, assert that poverty exists mainly because population tends to increase faster than food supply. Other writers accept the theory of Henry George that poverty exists because the owner of land receives as rent a large share of the annual product which ought to go to the laborer. Socialistic writers, following the doctrine of Karl Marx, maintain that poverty is due to the fact that under capitalistic production the capitalist appropriates nearly all the product of labor, paying the laborer wages which barely suffice to keep him alive.

A more probable explanation is that poverty results not from a single cause, but from a number of causes. These have been grouped by Professor Carl Kelsey into three main classes, environmental, personal, and social, as shown in the following outline:—

CAUSES OF POVERTY

I. Environmental:

- (a) Adverse physical environment: polar regions, tropics, deserts, swamps.
- (b) Disasters, flood, earthquake, fire, famine.

II. Personal:

- (a) Physical defects: feeble-mindedness, insanity, blindness.
- (b) Moral defects: dishonesty, laziness, shiftlessness, etc.
- (c) Intemperance.
- (d) Licentiousness.
- (e) Sickness.
- (f) Accident.

III. Social:

- (a) Industrial changes affecting the worker: change of location of trade, inventions, strikes.

- (b) Exploitation.
- (c) Race prejudice. ✓
- (d) Sickness, death, desertion, crime of natural supporter
- (e) Defective sanitation.
- (f) Defective educational system.
- (g) Bad social environment.
- (h) War.
- (i) Unwise philanthropy.

It is estimated that about one third of all cases applying for relief do so because of sickness; another ^{relative} third because of labor problems; and probably ^{importance} one fifth owing to intemperance in the family.

196. General Methods of Poor Relief. The two general methods of granting public relief are: (1) outdoor relief, or that given to dependent persons in their ^{outdoor} homes; and (2) indoor or institutional relief. ^{relief}

Outdoor relief is carried on by local governments, which often supply goods, or orders for goods, to persons unable to support themselves. The practical difficulties in administering public outdoor relief are so great that many authorities believe that this plan should be discontinued except in rural districts.¹

Indoor or institutional relief is afforded through the almshouse or poor-farm, the fundamental institution in our system of public charity. The almshouse is ^{indoor} relief generally a county institution except in New ^{relief} England, where the care of the poor devolves upon the towns.² Municipal almshouses are maintained by the larger cities; while rural townships usually care for their paupers on poor-farms.³

197. Care of Dependent Children. The degrading influence of almshouse life upon children is now generally

¹ "Nearly all the experiences in this country indicate that outdoor relief is a source of corruption to politics, of expense to the community, and of degradation and increased pauperization to the poor . . . In the new communities of the West it has seemed to be almost necessary; but it is always to be watched with care, to be kept at a minimum, and in large cities to be definitely prohibited." — Warner, A. G., *American Charities*, pp. 174-175.

² New Hampshire forms an exception, having both county and town institutions.

³ In several commonwealths a group of smaller counties frequently unite in the maintenance of a district or association almshouse.

recognized,¹ and in many commonwealths dependent children are cared for in children's homes. Since institutional life at best is unnatural and unsatisfactory, this method is often supplemented or even entirely superseded by the placing-out system, which aims to have dependent children adopted at an early age into private families. Practically all charitable workers agree that "the home is the natural place to properly develop the child"; and hence if supplemented by proper supervision, the placing-out plan is far superior to the institutional method.

198. Medical Charities. Medical assistance forms another important branch of public charity. Throughout the ~~Infirmaries, hospitals, and dispensaries~~ United States it is customary to furnish advice and medicines to the destitute in their homes, for which purpose physicians are employed by the town or county authorities. More serious cases may be treated in the county infirmary (a general hospital connected with the almshouse); or in cities, at the municipal hospital. A prominent feature of city hospitals is the free dispensary, where advice and medicine may be secured without charge by those unable to pay.

199. Dealing with the Vagrant Poor. The best method of dealing with the homeless and wandering poor is a serious problem, largely because of the difficulty of distinguishing between the professional tramp and the honest but unfortunate seeker for employment. In most communities, both of these classes are treated in the same way, a common method being to get rid of them as promptly as possible by passing them along to a neighboring city, transportation being frequently provided for this purpose. Sometimes such persons are arrested as vagrants and sent to the jail or workhouse; or again they may be given the relief asked

¹ Dickens said: "Throw a child under a cart-horse's feet and a loaded wagon sooner than take him to an almshouse." — The keeping of normal children in almshouses is forbidden in many States (for example, in Massachusetts, New York, Ohio, Indiana, and others).

for without any attempt to discriminate between the deserving unfortunate and the shiftless vagabond.¹ Each of these methods is bad; but as yet comparatively few communities have adopted a more scientific plan whereby each able-bodied applicant for relief is put to work in a wood or stone yard, pending a careful investigation of his case, followed by such action as the circumstances warrant.

200. Charity Organization Societies. In many of the larger cities, the various charitable organizations are united in a charity organization society² which is a central agency for securing coöperation among the different philanthropic agencies. The charity organization society aims to secure accurate knowledge concerning each applicant for aid, and then to bring each deserving case to the attention of the organization which can best deal with it.³ This plan avoids duplication of effort by different societies, and tends to prevent imposition by professional tramps and beggars. It makes possible the elimination of indiscriminate almsgiving, since the citizen may refer unknown applicants for relief to the charity organization society, whose special business is the investigation of such cases. Another important function of this organization is the collection and diffusion of accurate information concerning charities and their administration.

201. Care of Defective Classes. In earlier days the almshouse commonly cared for defectives, as well as for the dependent class; but at the present time <sup>Specialized
State
Institutions</sup> defectives, including the insane, blind, deaf-mutes, and feeble-minded, are often cared for in special institutions maintained by the State.⁴

¹ "Giving without knowledge is, in its effects, like administering powerful medicines in the dark, and the effect of such impatient and impulsive payment for escape from importunity is a direct bid for vagabondage" — Henderson, C. R., *Dependent, Defective, and Delinquent Classes*, p. 89.

² Other names are the Bureau of Charities, Associated Charities, and Society for Organizing Charities.

³ Thus the aim of the charity organization society is simply to act as a clearing-house for its members, but in practice it gives much direct aid.

⁴ A few States have special institutions for the care of epileptics.

Until the early part of the nineteenth century, the insane were treated in a most inhuman manner. Largely through the efforts of Dorothea Dix, public sentiment in the United States was finally aroused on this subject, and gradually the policy has been adopted of treating insanity as a disease, and caring for patients in State rather than in local institutions.¹ In every commonwealth the commitment of persons supposed to be insane is carefully regulated by statutes providing for publicity of proceedings, and for expert medical testimony on the question of insanity.

The blind, deaf and dumb, epileptics, and feeble-minded have also been made State wards in many commonwealths, ~~other defectives~~ receiving education and support at public expense. A single commonwealth sometimes maintains a dozen different types of specialized charitable institutions, in addition to those maintained by local governments.

202. The Cost of Charities. The expenditure for charities and corrections is generally the largest single item of the State budget, often comprising from thirty to forty per cent of the entire expenditure of the commonwealth. If to this we add the amount expended by private charities, the total reaches a startling sum. Professor Bushnell estimates that "the total number of public and private abnormal dependents in the United States must be not far from 3,000,000, who are maintained at an annual expense of nearly \$200,000,000."²

¹ The present tendency is to have the incurable insane cared for in county asylums (often connected with the almshouse), leaving the better care which the State can offer for the hopeful cases. This is the plan in Pennsylvania and Wisconsin.

² Henderson, C. R., *Modern Methods of Charity*, pp. 385-390.



BOSTON CITY HOSPITAL RELIEF STATION



(By courtesy of the Tenement House Commission, New York)

A TENEMENT HOUSE SECTION IN NEW YORK CITY



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QUESTIONS AND EXERCISES

1. What provision is made in your State for the defective classes, the deaf, blind, insane, feeble-minded?
2. Is there a State board of charities in your commonwealth? Powers?
3. Make a list of the institutions and associations in your community for the care of the poor. Which of these are public and which private?
4. What local authority (town, municipal, or county) has charge of poor relief? What was the cost of poor relief in your community last year? What part of this sum was expended for outdoor relief?
5. Where is your almshouse located? Is any attempt made to separate the different classes of inmates? Is it well managed?
6. How are the vagrant poor or tramps dealt with in your community?
7. If a street beggar should ask you for money, would you give him any? What are the arguments against promiscuous almsgiving?
8. Is there a charity organization society or association in your community? If so, prepare a paper describing its methods of work.
9. How are dependent children cared for in your community? Is the plan a satisfactory one?
10. Does your community employ physicians to care for those too poor to afford them? Is there a free dispensary in your community?
11. Enumerate some of the principal causes of poverty. Ask local officials what causes are chiefly responsible for pauperism in your community.

CHAPTER XV

CONTROL OF ECONOMIC INTERESTS

203. Economic Functions of Government. An economic service or function is one which relates to the material welfare of society, affecting in some way the production, exchange, distribution, or consumption of wealth. Thus the economic functions of government are directed chiefly toward increasing the total amount of wealth produced, facilitating its exchange, or providing for its more equitable distribution among the various members of society.

To accomplish these aims, State governments perform certain fundamental services without which material progress would be impossible, — such as the maintenance of order, and the protection of individual freedom, private property, and contract rights. These primary services fulfilled, other imperative needs arise: the land and other natural resources must be conserved; labor and capital must be protected and regulated in the public interest; agriculture and commerce are to be promoted. Hence the most important economic activities of State governments appertain chiefly to land, labor, and capital — the three great sources of wealth — and to commerce, or the exchange of commodities.

204. Lands. Nearly all of the States at some period in their history owned large tracts of land, most of which has been sold to settlers at a nominal figure, or sacrificed to obtain immediate funds for educational purposes, or given as bounties to canal and railroad companies. A few commonwealths, notably New York, still own considerable forests; several have important State reservations — such as Valley Forge in Pennsylvania, and

Niagara Falls in New York; while others retain lands for use in the operation of commercial or irrigation canals. Further, all States own the land occupied by their public buildings and institutions.

Over private lands within its borders each commonwealth exercises jurisdiction by virtue of its police power. Such lands are subject to taxation, and also to ^{Private} ~~lands~~ the exercise of the right of eminent domain; that is, appropriation for public purposes upon compensation to the owner. The State also has the right of escheat, that is, the right to take private lands in the case of persons who die leaving no lawful heirs.

205. Forests, Game, and Fish. Within recent years both the State and federal governments have realized the necessity of prompt action in order to prevent ^{Exhaustion} ~~of timber~~ entire destruction of the country's forests. At the ^{supply} present rate of cutting, the domestic timber supply will soon be exhausted; and the destruction of the forests so affects the drainage of the earth as greatly to increase the danger of floods and freshets.

An important step toward a policy of scientific forestry was taken by the federal government in 1905 when the national forest reserves — in area nearly 100,000,000 ^{Scientific} ~~forestry~~ acres — were transferred from the Interior Department to that of Agriculture. Recently, too, a number of the States, following the example of New York, have taken active measures looking toward the preservation of their forests. Nineteen commonwealths¹ now have officers (usually called forest commissioners) charged with the care of forest interests. Local and State forestry associations have been formed in twenty commonwealths, and in nearly all an Arbor Day is set aside each year to encourage the planting and care of trees.

For the preservation of fish and game, laws have been

¹ These are California, Connecticut, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, West Virginia, and Wisconsin.

enacted providing for close seasons, that is, seasons within ~~Fish and game laws~~ which fish or game cannot be taken or killed. Such laws also generally restrict the manner of hunting certain game and of catching fish. The administration of fish and game laws is ordinarily entrusted to one or more commissioners, who are aided in their work by a number of wardens.

206. Agriculture and Agricultural Interests. For the general promotion of agricultural interests there is commonly a department of agriculture in charge of a ~~State agricultural department~~ commissioner, or a State agricultural board. The duties of this department ordinarily include inspection of live stock with a view of preventing contagious disease, administration of State laws relative to the sale of adulterated food and dairy products, holding of farmers' institutes and annual State fairs, recommendation of desirable legislation, and other miscellaneous duties.

Education in scientific agriculture has been greatly aided by the establishment of agricultural and mechanical ~~Agricultural education~~ colleges, which in many commonwealths form an integral part of the State university. Agricultural experiment stations have also been established, which, like the State agricultural colleges, are subsidized by the federal government.

207. Labor and Factory Laws. The adoption of regulations concerning the employment of labor and the conditions in factories constitutes another important ~~State labor bureaus~~ economic function of State governments. In thirty-two commonwealths general supervision of labor interests is entrusted to a State labor bureau, at the head of which is a commissioner aided by several deputies. One of the most important duties of these bureaus is the collection of statistics bearing upon industrial education and the economic condition of the laboring class.¹

¹ A similar service is performed on a more extensive scale by the federal Department of Labor.



(By courtesy of the Forest Service, Washington, D. C.)

The complete destruction of a forest by fire, Port Townsend, Wash. The trees planted to replace those burned grow to the height of a man in about four years. Many years must elapse before a forest can be restored.



Brush piles ready for burning, Bitter-Root National Forest, Mont. Scientific methods prevent forest fires.



(By courtesy of the Review of Reviews Company)

MINNESOTA AGRICULTURAL EXPERIMENT STATION

Crop nursery near St. Paul. Here new varieties of cereals are originated, and old ones improved. The small, erect bundles of grain in the foreground are each of a distinct variety of wheat. These bundles have been carefully harvested and tied up with cloth to prevent loss of grain. An exact account is taken of the number of heads, weight of yield, etc., and seed from the best plants is saved for use the next year.



THE DAIRY CAR OF THE "BETTER FARMING SPECIAL"

Other cars are devoted to crops, forestry, etc. The train is equipped by the Boston and Albany Railroad with the cooperation of the Massachusetts Agricultural College. It is periodically sent through the agricultural districts and lectures are delivered to audiences of farmers.

Twenty-seven commonwealths provide factory inspectors, who visit and inspect factories, workshops, and mercantile establishments, and enforce the State laws concerning them.¹ Factory legislation has three principal objects: (1) The protection of the health of employees, by securing proper ventilation, heating, lighting, and good sanitary conditions generally. (2) The prevention of accidents, by requiring guards on dangerous machinery, elevators, and hoistways; also by requiring the inspection of boilers, and the construction of suitable exits and fire-escapes. (3) The regulation of the conditions of employment, especially in the case of women and children, by restricting the hours of labor, prescribing intervals of rest during the working-day, prohibiting night work, and fixing a minimum age limit for the employment of children — usually fourteen years.²

Many commonwealths have provided that eight hours shall constitute a day's work for all laborers employed by the State or local governments. In private industry the hours of labor have been generally reduced from twelve or fourteen hours in the early part of the nineteenth century to eight or ten at the present time; and one of the principal aims of labor unions is to secure universal acceptance of the eight-hour day.

To aid in the settlement of industrial disputes, seventeen States³ have established boards of arbitration. These generally consist of three or five members appointed by the governor, employers and employees being equally represented. When strikes or lock-outs occur, it is the duty of these boards to investigate the situation, and if possible to bring about an amicable settlement.

¹ In fifteen States the duties of factory inspectors are combined with those of the bureau of labor statistics.

² Social welfare imperatively demands the restriction of child labor, and in recent years much has been accomplished in this direction, largely owing to the activity of the General Federation of Women's Clubs, and other organizations. In 1907, measures restricting the employment of children were passed in twenty-eight States.

³ California, Colorado, Connecticut, Idaho, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Missouri, New Jersey, New York, Ohio, Utah, Wisconsin.

They may also arbitrate the controversy, providing both parties consent.

In many commonwealths free public employment offices ^{Public} are maintained by State or local authority to aid ^{employment} the unemployed in finding work, and also as a ^{bureaus} means of checking the abuses of private employment bureaus.

. 208. **Characteristics and Development of Corporations.** Capital is the third great agency in the production of wealth; ^{Character-} and perhaps the most important economic func- ^{tions} tion of State governments is exercised through the power to create and regulate corporations, the capitalistic organizations which control the greater part of the commerce and manufactures of the country. A corporation may be defined as a legal person, distinct from the members who comprise it, having a special name, and the capacity of acting for various purposes as a single individual. The corporation is immortal in the legal sense that it can be made capable of indefinite duration; it may sue and be sued in its corporate name; it may acquire property, and — under certain limitations — borrow money; and finally, it has the power to elect officers and to adopt by-laws for the detailed regulation of its business.

The private corporation is of ancient origin, but its remarkable development in the nineteenth century may be ^{Develop-} traced to the industrial revolution of the eighteenth. That revolution was characterized by the change from hand to machine labor, from production on a small scale to the factory system. The partnership was at first employed as a means of obtaining the larger capital demanded by the new industrial methods, and this continued the common form of business association until the middle of the nineteenth century. But even the partnership was inadequate for the colossal industrial development of the age of steam and electricity; and hence about the middle of the nineteenth century, the corporation came *into general use for larger industrial enterprises.*

The stock of the corporation can be distributed among hundreds or thousands of members, thus accumulating amounts of capital impossible in the case of a ^{Advantages} partnership. Then, too, the shareholders of the corporation are not liable for corporation debts beyond the amount of their stock,¹ whereas partners are jointly and severally liable for firm debts to the full extent of their property. Furthermore, corporate liability cannot be created by the acts of individual members, but only by the directors or officers duly authorized; whereas each partner ordinarily has authority to bind the firm by his acts if within the scope of the partnership business. Finally, the partnership is ordinarily terminated by the death of one of its members, the contrary being true of the corporation. These and other advantages have given the corporation its dominating position in modern industrial life.

209. Organization and Control of Corporations. In general, the powers, duties, and liabilities of the corporation are determined by its charter, an instrument ^{General and} ^{Special acts} ordinarily granted by the State government under a general act, although a few commonwealths still permit the granting of charters by special acts.² In the case of a private corporation the charter once granted is in the nature of a contract, and cannot afterwards be materially altered or annulled unless this right has been previously reserved.³

In the organization of private corporations a distinction is commonly made between those formed for profit and those not for profit. In most States, corporations for ^{Method of} profit are organized under a general law applicable ^{organization} alike to all such corporations; but frequently the general law does not apply to certain classes of corporations, such

¹ Except in a few States where shareholders are liable for an additional sum equal to the face value of their stock.

² Congress may charter corporations for carrying on enterprises which come within the range of federal authority; for example, national banks and railways engaged in interstate commerce.

³ The right of the legislature to amend all corporation charters is now generally reserved either by statute or express constitutional provision.

as banks, insurance companies, and railroads, which are chartered under laws specially adapted to each of these forms of industry. The general corporation laws ordinarily provide that persons who wish to form a corporation must apply to the secretary of state for a charter, which will be duly issued upon compliance with the legal requirements.

Corporations are commonly required to make annual reports to the secretary of state, showing the amount of their capital stock, volume of business, and indebtedness; and they must also submit to such other requirements and regulations as the legislature may from time to time deem necessary in the exercise of its police and taxing powers.

210. Regulation of Banks, Insurance Companies, and Railroads. A considerable degree of State control is customary in the case of banks, insurance companies, and railroads, since these corporations come into the closest relations with the people and vitally affect the public welfare. Banks are commonly organized under a general banking law, which in many States must be first submitted to the voters for approval. Such laws regulate in considerable detail the management of banks, with the object of protecting depositors and the public.

Insurance companies are also subject to a considerable degree of supervision, frequently exercised by a State insurance commissioner. As in the case of banks, provision is ordinarily made for the examination of such companies, for annual reports showing in detail the business for the preceding year, and for the maintenance of a reserve fund bearing a certain ratio to the amount of insurance in force.

As quasi-public corporations, railroads are subject to a large degree of governmental supervision. Their business which lies wholly within the boundaries of the commonwealth may be regulated by the State government, interstate traffic being subject to federal control.

For their supervision two thirds of the commonwealths have established boards of railway commissioners, charged with the special duty of protecting the public and shippers. State railway legislation has sought especially to check combinations of parallel or competing lines (the object of such combination being to destroy competition); and also to prevent discriminating rates in favor of certain shippers, unreasonable charges for services, and overcapitalization of roads with the consequent burden upon rates. The enforcement of these restrictive measures has been entrusted to State railway commissions, which in some commonwealths even possess the power to fix maximum rates for carrying passengers and freight.¹

✓ **III. Industrial Combinations.** The simplest form of combination among producers consists of "friendly agreements" designed to check competition by establishing a uniform selling price, or by limiting the amount of the product. In times past these agreements were often violated, and soon a second and more formal plan of organization was developed, known as the "pool." This was a formal agreement to maintain prices through a division of the territory, business, or earnings. For example, prior to the formation of the Whiskey Trust, agreements were usually made annually among the different distillers, fixing the amount which each should produce during the year. For many years pooling was common in the railway business, the traffic or revenues being divided among the various roads according to certain fixed ratios. These agreements were not enforceable at law, since American courts have uniformly held pooling contracts to be in restraint of trade and against public policy; and the difficulty of enforcing such arrangements, together with the prohibition of railway pooling by the federal Interstate Commerce Act of 1887, ultimately led to the adoption of a new form of combination.

¹ On the subject of federal control of railways, see Sections 400-409.

This third form of combination is known as the trust. Originally trusts were formed by having competitive corporations place their stock in the hands of a board of trustees, who were thus enabled to manage the business of the several corporations in such a way as to secure complete harmony of action. The original stockholders in the corporation were given trust certificates in exchange for their stock, and dividends were paid on the basis of these certificates. The first trust organized in this form was the Standard Oil Trust (1882), later followed by the Whiskey Trust, the Sugar Trust, and many others.

The courts finally held the trust form of combination illegal, declaring that corporations had no power to surrender control of their stock to a board of trustees.¹

Further, most of the States as well as the federal government passed anti-trust laws. But the effect of judicial decisions, as well as of hostile legislation, was merely to cause a change in the form of combination. In some cases, as with the Whiskey and Sugar Trusts, a single immense corporation was formed which undertook to secure a monopoly by buying out numerous smaller concerns. In other cases, as with the Standard Oil Company, those who directed its policy obtained a majority of the stock in several large corporations, harmony of action being insured by having the same men in control of the affairs of each separate corporation.

At the present time the common form of combination is that of one great corporation owning many separate capitalistic plants. The rapid formation of such combinations within the last twenty years constitutes the most striking fact in the economic world. Since their formation is largely due to the influence of modern capitalistic production, these combinations are usually called capitalistic monopolies.

The chief advantages claimed for the great industrial

¹ *State of New York v. The North River Sugar Refining Co.*, 121 N. Y. 582.

combinations are that they avoid the wastes of excessive competition, and secure the economies of large-scale production. The principal objections urged against them are that they crush out competition, often by unfair methods, and secure a monopoly control which enables them to charge monopoly prices. Another objection is that their capital is often excessive, thus necessitating high prices to the consumer in order that dividends may be paid upon watered stock. Widely divergent views are held as to the course which government should take concerning capitalistic monopolies. Many persons favor radical action which will entirely destroy them; while others believe that trusts should be so regulated by law that their good features may be retained, and their evil practices abolished. It is generally conceded that effective action in this direction is only possible through the agency of the federal government, which has power to regulate all corporations engaged in foreign or interstate commerce.¹

212. Transportation — Roads and Bridges. Since in modern times commerce is essentially a matter of transportation, the construction and maintenance of roads and bridges is one of the most important functions exercised under State authority.² Supervision of road construction is commonly entrusted to locally elected county or township commissioners. The township commissioners ordinarily have authority to divide the township into several road districts, in each of which an overseer is chosen who acts under the authority of the township officers. It is the duty of the commissioners to keep in repair the existing roads and bridges, and to construct new ones upon the petition of a certain number of freeholders. Under the power of eminent domain, private

Road-build-
ing and
main-
tenance

¹ See Section 470.

² The only important road ever constructed by the federal government was the National or Cumberland Road, commenced in 1807, at Cumberland, Maryland, and finally extended westward to Vandalia, Illinois, a distance of about eight hundred miles. This road was well constructed and played a most important part in the settlement of the West. It has long since been turned over to the States through which it passes.

property may be appropriated for such construction upon making proper compensation to the owner. A part of the cost of construction is commonly assessed upon the abutting land-owners, the remainder being paid out of the local treasury. The cost of maintenance is commonly borne in the same way; and many States still permit the road-tax to be paid by a certain number of days' labor on the road — a policy scarcely conducive to expert construction.

The inferior results of local road-making have led a number of commonwealths to coöperate in this work by ~~State supervision~~ creating the office of State commissioner charged with general supervision of road construction throughout the commonwealth. It is the duty of the commissioner to pass upon applications from local commissioners for new roads, also to furnish plans and award contracts, the cost being apportioned between the State and the local district.

Outside of the cities the construction of bridges is generally left to the county commissioners, subject to the ~~bridges~~ requirement of the federal government that no bridge shall be built across a navigable stream unless its construction is first approved by the Secretary of War.

213. Canals and River Navigation. Nearly all the canals in the country have been constructed by the State governments, or by companies chartered by them. The period of canal construction dates from 1825 (when the Erie Canal was completed) to about 1840, at which time attention was diverted to railroad building. The construction of canals contributed greatly to the early development of the commonwealths in which they were located, and for some time their competition served as a check upon railroad rates; but with few exceptions they have now been abandoned, the railway having proven too formidable a competitor.¹

¹ Since 1850 the only new canals of importance are the Illinois and Mississippi, and the Chicago Sanitary and Ship Canal; but large sums have been spent in improving the Erie

General supervision of canals is ordinarily exercised by the State board of public works, or canal board. The executive officer in direct charge of the system ~~Supervision~~ is the superintendent of public works or the State engineer. This officer with his assistants looks after necessary repairs, enforces the rules of navigation, and investigates improvement projects.

River navigation is also generally subject to State supervision under police regulations designed to safe- ~~River~~ guard the public. Enforcement of these regula- ~~navigation~~ tions is sometimes entrusted to the State superintendent of public works.

214. Weights and Measures. Commerce is greatly aided by the use of accurate and uniform standards of value and of weights and measures. The estab- ~~State~~ ~~control~~ lishment and regulation of the standard of value is an exclusive function of the federal government. While Congress may likewise exercise exclusive authority over the subject of weights and measures, it has not as yet done so, and hence the establishment of these standards is a State function. In 1836 Congress instructed the Secretary of the Treasury to deliver to the governors of the respective States complete sets of the standards of weights and measures used in the federal custom-house, thus making possible a uniform system. The State standards are generally in the custody of a State sealer or superintendent of weights and measures. From this officer copies may be obtained for the use of the county sealers, who in turn furnish copies for the use of local officials.

215. Trade-marks. In order to encourage the production of a high quality of goods and to protect manufacturers against dishonest competition, the State governments

Canal. In all there are forty-two hundred miles of canals in the United States, located in New York, Pennsylvania, Ohio, Virginia, New Jersey, Delaware, Maryland, Indiana, Illinois, and Michigan; but many of these have fallen into disuse. Besides those mentioned, the other principal canals are the Illinois and Michigan, the Chesapeake and Ohio, the Wabash and Erie, and the Sault Sainte Marie.

grant proprietary rights in the use of private brands, labels, and trade-marks. When such brands or marks are regularly advertised by one manufacturer, they cannot be legally used by another, and thus both the manufacturer and the consumer are protected.

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QUESTIONS AND EXERCISES

1. Prepare a report on the policy of your State in disposing of its public lands.
2. What public lands are now owned by your State? Have any steps been taken toward forest preservation?
3. Explain the object of fish and game laws. Who enforces these measures in your commonwealth?
4. Is your State department of agriculture in charge of a commissioner or board? Examine the last report of this department, and write a short paper upon its work.
5. Who is at the head of your State labor bureau? Examine the report of this department and explain the functions performed.
6. Prepare a report upon the factory legislation in force in your State, pay-

ing especial attention to the restrictions upon the labor of women and children.

7. Is there a State board of arbitration in your commonwealth? How is it composed? Has it been successful in settling industrial disputes?
8. What strikes occurred in your State last year? What percentage of these were successful? (See report of Bureau of Labor.)
9. Prepare a report upon the use of the injunction in connection with labor disputes.
10. What is the average daily wage of workmen in your State? Is this average increasing or decreasing?
11. What are the common hours of labor in the various industries in your State? What are the chief arguments in favor of an eight-hour day as compared with one of ten or twelve hours?
12. Is there a free public employment office in your community? What work does it perform?
13. How are private corporations chartered in your commonwealth? May the legislature modify the charter?
14. Prepare a report on the Dartmouth College case (4 Wheat. 518; Thayer's Cases, II, 1564).
15. What annual reports are required from corporations in your State? Is there an annual tax upon capital stock or earnings?
16. (a) Prepare a report outlining the principal measures adopted by your State government for the regulation of banks. (b) A similar report concerning insurance companies. (c) A similar report concerning railway regulation in your State.
17. What is a trust? Outline the law of your State concerning trusts.
18. Prepare a report showing (a) the wastes of excessive competition, and (b) the advantages of large-scale production. (Jenks, J. W., *The Trust Problem*.)
19. Explain how the division of powers between the federal and State governments has made State control of railways and trusts largely ineffectual.
20. Name several partnerships in your community; several corporations. Name five of the largest industrial combinations (commonly called trusts) in the United States.
21. Who has charge of road-making in your commonwealth? Does the State supervise road construction or bear part of the cost?
22. Are there any canals in your State? What officers have charge of them? When were they constructed? What was the cost of maintenance last year?
23. What regulations have been adopted by your State government concerning river navigation? Who enforces these regulations?
24. Give the provisions of your State law concerning (a) weights and measures; (b) trade-marks.

CHAPTER XVI

PUBLIC EDUCATION

216. Early and Modern Education. Between early and modern systems of education two striking differences appear. From the first century A.D. down to the very beginning of the nineteenth century, education was almost universally controlled by the church, and was confined to the wealthier classes; while to-day education is generally recognized as a function of the State, and its benefits are freely offered to all children, the expense being borne by the community. Nowhere has this modern conception of free public education been more fully realized than in the United States.

217. State Control of Education. During our colonial history, schools and colleges were fostered by the individual ~~educational~~ colonies, and hence upon the adoption of the ~~systems~~ federal constitution, control of public instruction was one of the functions retained by the State governments. It will be seen later that the federal government has aided the cause of education in a substantial manner; but the actual control and maintenance of the public schools is a State, not a federal, function. State educational systems vary widely in character, but generally include: (1) a system of elementary or common schools; (2) a system of secondary or high schools; and (3), in nearly all of the commonwealths, a State university.

218. Elementary or Common Schools. Elementary or common schools are found in every section of the United States, however sparsely inhabited. Elementary education ordinarily includes the first eight grades of the course of study, occupying the child from

the sixth to the fourteenth year. This period is frequently subdivided into the primary department, comprising the first four grades; the intermediate department, including the fifth and sixth grades; and the grammar department, or seventh and eighth grades. Where elementary schools are fully graded, there is generally a separate room for each of the eight grades, promotions from one room to another being an annual or semi-annual event.

The course of study in the elementary schools ordinarily includes reading, writing, arithmetic, spelling, language, grammar, geography, and history; and in progressive school systems, instruction is also provided in natural science, drawing, vocal music, physical culture, and manual training.

Public interest in educational affairs has usually centered upon the elementary schools, owing to the fact that nearly ninety per cent of the entire number of pupils are enrolled in the first eight grades. As training schools for the duties of citizenship our common schools are probably unequaled by those of any other country. Two of the great advantages justly claimed for the American public-school system are: first, the development of individual character by massing children from all walks of life in common association, thereby compelling each child to take the rough-and-tumble of life in competition with every other; and second, the Americanizing influence upon foreigners whose children in the public schools learn our language and the principles of American institutions, thus making less difficult the problem of assimilation.

At the present time there are enrolled in the common schools of the United States over 23,000,000 pupils, or about twenty per cent of the total population. Within the last thirty years the number of schoolhouses as well as the revenues for school purposes have more than doubled; the number of days attended by pupils has in-

creased one fourth; while the percentage of illiterates has decreased from seventeen per cent in 1880 to about ten per cent at the present time.

219. High School or Secondary Education. Secondary education (comprising the ninth, tenth, eleventh, and twelfth years of the course of instruction) is carried on chiefly in public high schools, which in their present form are a product of the nineteenth century.¹ Previous to 1850, only eighteen public high schools had been established in the United States. Since 1850, public high schools have multiplied rapidly, until at present the total number of such institutions is about 14,000, with 2,000,000 students. Several States, including Massachusetts, Maryland, Minnesota, and California, require each township to maintain a free public high school. Elsewhere the establishment of these institutions is left to the discretion of the local school districts, although the constitutions of at least half the commonwealths mention high schools as special subjects of legislative and general interest.

The high-school course ordinarily comprises four years, following eight years of work in the elementary school. **Character.** Or if the junior high school plan of organization prevails, the senior high school includes the tenth, eleventh, and twelfth grades. Most public high schools receive and educate both sexes in the same classrooms and under the same teachers, although a few cities provide separate high schools for each sex.

The modern high school is sometimes called the "people's college," and in range of studies and thoroughness of work, good high schools of to-day doubtless surpass even the best colleges of fifty years ago. The best high schools now serve the double function of fitting students for the everyday duties of life, and of preparing their

¹ In the earlier colonial period, secondary instruction was given in what were called grammar schools, later superseded by the academies. As secondary schools the academies have in turn been largely supplanted by the public high schools.



BOSTON PUBLIC LIBRARY

There are 28 Branch Libraries and Reading Rooms. The Library gives free lecture courses with special regard to the aesthetic development of cities, and cooperates with the colleges in their University Extension Courses, and with the schools, loaning pictures, as well as books, to teachers for use in their work.



By arrangement with the Superintendent of Schools, Pittsburgh.

THE SCHENLEY HIGH SCHOOL, PITTSBURGH, PA

graduates to meet university entrance requirements. To accomplish this, most schools offer several courses of study from which the student may choose the one which he wishes to follow, such as the classical course, the modern language course, the scientific, commercial, or manual-training course. Within recent years the high-school curriculum has been greatly broadened through the introduction of manual training and commercial subjects, largely owing to the demand that the secondary schools afford a practical training for life. Many municipalities have expended large sums for separate manual training and commercial high schools, while in other cities these subjects are included among the many departments of a "cosmopolitan" high school.

220. Colleges and Universities. The 563 colleges and universities of the United States may be grouped into three classes. (1) Non-sectarian institutions chartered ^{classes} by the State governments as private corporations, such as Harvard, Cornell, and Leland Stanford. (2) Denominational institutions likewise chartered as private corporations, but which are under ecclesiastical control or supervision, as Georgetown and Wesleyan universities. (3) Universities and colleges established by the State governments as public institutions and directly subject to State control, as the State universities of Michigan, Wisconsin, and California. The foremost colleges and universities of the country are included in the first or third classes, being non-sectarian in character; but in numbers the institutions under church control are in the majority.

221. The State University. In the earlier period of our history, nearly all the institutions of higher education were chartered as private corporations, although often ^{origin} receiving aid from the State in the form of land or money, or exemption from taxation. With the growth of the democratic spirit of the nineteenth century, considerable opposition was manifested toward granting public aid to institutions which were subject not to public

control, but to that of some denomination or sect; and the belief that the State should control higher as well as elementary education led to the establishment of the State universities. In this movement the Southern States took the lead, their example being soon afterwards followed by Indiana (1820), and Michigan (1837). East of the Alleghanies the private institutions had become so firmly established as to leave no place for State universities;¹ but "the establishment of State universities in the West and South came as a matter of course, and has kept pace with the stars on the flag."²

The twenty-seven States formed out of the public lands received from the federal government a donation generally consisting of two complete townships (seventy-two square miles of land) for the support of higher education. Again in 1862 the State universities received substantial federal aid through the enactment by Congress of the Morrill Act granting to each State in the Union, and to each State afterwards admitted, 30,000 acres of land for each Representative and Senator in Congress. The income of the funds arising from the sale of this land was to form a permanent endowment for the support of higher institutions of learning in which technical and agricultural branches should be taught. Among the State universities owing their origin to the Morrill Act are those of California, Illinois, Maine, Minnesota, Nebraska, Nevada, West Virginia, and Wyoming. By acts passed in 1890 and in 1907, the federal government gave further aid to agricultural and mechanical education by granting an annual appropriation (now \$75,000) to each State maintaining an institution of this character.

In all, forty commonwealths now maintain State universities, and these enroll about one third of the entire number of university students. Six of the ten largest universities of the country are State institutions. All

¹ Maine, Vermont, and Virginia have State universities.

² Dexter, R. G., *History of Education in the United States*, p. 455.

are co-educational, and in all tuition is practically free to residents of the State. The income is derived in part from the proceeds of the federal land grants, but chiefly from the "mill tax," or general appropriation authorized by the State legislature. The State university is commonly organized into a number of colleges, as the college of arts, agriculture, engineering, law, medicine, veterinary medicine, and pharmacy. The control is vested in a board of trustees or regents, who elect a president as the executive head of the institution, and upon his recommendation choose the professors and instructors.

State universities are commonly in organic relation with the high schools of the commonwealth, and by the accrediting system graduates of approved high schools pass directly into the universities without taking entrance ^{Relation to high schools} examinations. Thus the State universities crown the educational system provided by the State; and the fact that they are supported by the resources of the State, together with the broad policy which has characterized their administration, apparently assures them a position of increasing influence among institutions of higher learning.

222. Administration of Public Schools. The organization of the common-school system varies widely among the different States, and often there is great diversity even in different parts of the same State. This is owing to the fact that in its origin school administration was exceedingly local in character, and only gradually is it becoming unified through the exercise of State authority. The organization and control of the public schools is generally a function either of the school district, the township, the city, or the county. Accordingly there are four distinct types of school administration: the district, township, city, and county systems. Administration of the schools by each of these local areas is at all times subject to modification and control by the paramount authority of the State government.

223. The District System. The district system had its

origin in colonial New England, where each little settlement formed a natural nucleus for school administration. As the population moved westward, the same district system was created, and in some form still prevails in the great majority of the States. The district is the smallest unit of school administration, and is the most democratic feature of our political organization. In the South it is usually a subdivision of the county; elsewhere of the town or township. Generally the voters within the district elect the school trustees and levy the school tax, although in some States these functions are performed by the county. The great merit of the district system in the early period of our history was that it brought the public schools easily within the reach of all; but under present conditions this system is often wasteful and inefficient, owing to the small size of the administrative unit. The present tendency is to replace the district by a larger unit of organization, such as the township.¹

224 The Township System. Under the township system all schools within the boundaries of the township are placed under the control of a single board chosen by the voters. By this plan there are fewer schools, but these are better graded and equipped; and with the expenditure of less money better salaries can be paid, and better teachers secured. In six commonwealths the plan of township organization has been made compulsory, while in at least twenty others² there is permissive legislation providing for this or some similar form of centralization.

The township system tends to create two distinct classes of schools: first, centralized rural schools conveniently located throughout the township, generally graded to a certain extent, and having two or more

¹ In Maine, New Hampshire, Vermont, Massachusetts, New Jersey, and Indiana, the district plan has been entirely superseded by the township system.

² Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, Ohio, New York, North Carolina, the Dakotas, Pennsylvania, Rhode Island, Tennessee, and Wisconsin.



A modern township school building as provided under the "centralization plan."



Pupils of the primary and grammar grades as they go to school in Gustavus Township, Trumbull County, Ohio. A stage is required to stop at each child's home; and if the pupil is not ready to go to school he is marked "tardy."



Typical schoolhouse in irrigated district near Billings, Mont. Schools are among the first buildings erected on newly opened lands. They are so distributed that no child is out of reach. The sheds at the left are for the pupils' ponies.



(By courtesy of the Superintendent of Public Schools, New York City)

PUBLIC SCHOOL 165, NEW YORK CITY



(By courtesy of the Superintendent of Schools, Philadelphia)

THE GROVER CLEVELAND SCHOOL, PHILADELPHIA

TYPES OF MODERN CITY SCHOOLS

teachers; and second, township or union high schools, which constitute practically the only means of furnishing secondary education to the children in rural communities.

This centralization of rural schools gives rise to the problem of free transportation of pupils. With but three or four schools for the entire township, considerable distances must be traveled by many of the pupils; and this has led many commonwealths to provide free transportation of pupils.

225. City School Systems. Cities commonly have a system of schools separate from that of the township and county in which they are situated. In other words, the city itself ordinarily constitutes a special school district under general provisions of the school law relating to municipalities, or under special charters granted by the legislature. Great diversity prevails in the organization of schools in the various cities: but universally the administration is entrusted to a board of education (generally chosen by the voters), and a superintendent of schools who is the executive officer of the board. In organization, equipment, and supervision, city schools constitute the most highly developed type of our educational system.¹

226. The County System. Throughout the South, the county serves as the basis of school administration. In some States, as in Georgia and Maryland, the county itself constitutes a single school district; in other commonwealths it is generally subdivided for school administration, the smaller divisions being subject to county authority. Accordingly, county officials build schoolhouses, appoint teachers, and levy school taxes — functions which throughout the greater part of the Union are vested in district or township school boards.²

For the supervision of rural schools, most States outside

¹ See Section 79.

² Ten States, all Southern, except Utah, have the county system. These are Alabama, Florida, Georgia, Louisiana, Mississippi, Maryland, North Carolina, Tennessee, South Carolina, and Utah.

of New England have created the office of county superintendant or school commissioner. County super-supervision intendants are generally elected by popular vote, although in some commonwealths the office is an appointive one.

227. State Administration of Schools. State control of education is exercised in two ways: (1) through legislation, *Means of control* by general school laws for the entire State, or by special laws applying to certain localities; and (2) through State administrative officers, who exercise certain supervisory powers over the public schools.

Each commonwealth has an officer, generally known as the State superintendent of public instruction,¹ who nominally is the head of the public-school system of the State. In a few commonwealths, as in New York and Pennsylvania, this officer has important powers, so that he may be regarded as the actual head of the State school system. But in most commonwealths his powers are limited to investigation and admonition, while in several he is little more than a clerk charged with the collection and publication of educational statistics. The State superintendent is elected by popular vote in thirty-five commonwealths, and this fact has tended to make the office political in character, rather than professional. In thirteen other commonwealths the State superintendent is appointed either by the governor, the general assembly, or by the State board of education.² The common term is either two or four years.

About three fourths of the commonwealths have State boards of education, with powers which vary as widely as those of the several State superintendents. *State boards of education* In New York, Massachusetts, and Connecticut, the State board has large powers; elsewhere its duties are

¹ Also called the superintendent or commissioner of common or public schools.

² By the governor in Maine, Minnesota, New Hampshire, New Jersey, Ohio, Pennsylvania, Tennessee, by the general assembly in Vermont and Virginia, and by the State board of education in Rhode Island, Connecticut, Massachusetts, and New York.

confined chiefly to the examination and certification of teachers.

228. Text-Books. The adoption of suitable text-books is one of the most important matters connected with school administration. In about half of the States uniform ^{Selection} text-books are used throughout the commonwealth, these being chosen either by the State boards of education, or by special text-book commissions. In several others, county uniformity prevails; while in the remainder, the local boards ordinarily select the books to be used in each school district.

In practically all the States, text-books are provided free to indigent children. In eleven States they must be furnished free to all pupils, while in fourteen others ^{Free text-books} they may be so furnished at the option of the local board of education, or upon authorization by a local popular vote.

229. Employment and Certification of Teachers. The employment of teachers is a function of the local school boards, although the superintendent often has the power to appoint teachers subject to the board's confirmation. A license or certificate is universally required before one is eligible to teach in the public schools. In New England certificates are granted by the school committees of the town; elsewhere they are granted by county or city examining boards, or by the county superintendent. The qualifications required of teachers are being made continually higher, the tendency being to demand at least a normal-school training for elementary teachers, and a thorough college course, including professional training, for those employed in secondary schools.

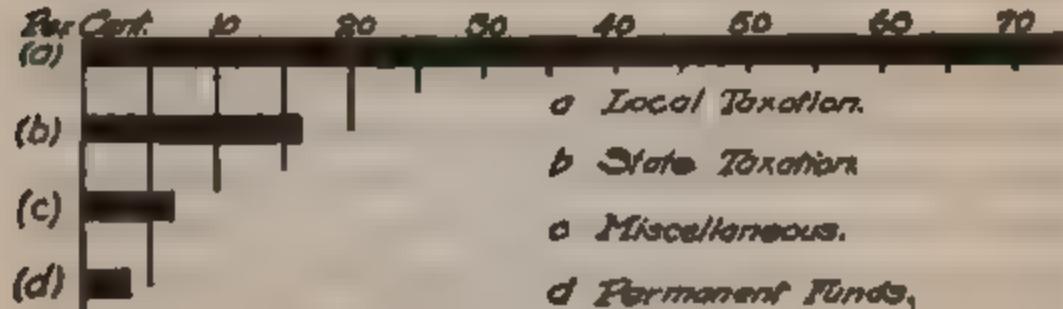
230. Compulsory Education. About three fourths of the States have compulsory education laws, which ordinarily require children from eight to fourteen years of age to attend school a certain number of weeks ^{Object and effect} each year. The penalty imposed on parents for neglect of

these statutes is a fine ranging from five to fifty dollars. The object of compulsory education laws is to protect the State from ignorance and illiteracy by assuring each child at least the elements of an education. That such laws are fairly effective is shown by the fact that seventy per cent of the total school population (five to eighteen years) is enrolled in the public schools. In cities the enforcement of compulsory educational laws is commonly entrusted to truant officers employed by boards of education.

231. School Revenues. The total annual expenditure on common schools in the United States is about \$900,000,000.

Sources. This revenue is derived from four sources: first,

local taxation, which yields 74 per cent of the total; second, State taxation, which furnishes 16 per cent; third, miscellaneous sources, about 7 per cent; and fourth, the income from permanent funds and endowments, which yields about 3 per cent.



SOURCES OF SCHOOL REVENUES

Local taxation is thus the principal source of school revenue throughout the Union. The amount of this local tax is generally voted by the legislative authority of the county or township, or by the district board of education. Frequently State laws fix the minimum and maximum amounts to be raised, leaving to local authorities discretion within these limits.

The amount raised by State taxation varies greatly in the different commonwealths. Some levy no State tax whatever for this purpose, while in others State taxes are relied on to

raise three fourths of the school revenues. The amount raised by State taxation is largest in the South ^{State} and the Far West, while elsewhere local taxes are ^{taxation} chiefly relied on. State taxation is especially advantageous to the poorer sections of the commonwealth, where lack of such revenue would result in schools of low grade.

Miscellaneous sources consist of revenues from fines, licenses, penalties, and special taxes, which in some States are devoted to the support of the schools. The permanent funds available for the support of public schools are derived chiefly from the public-land endowment granted by the federal government.

232. Federal Aid to Public Education. By the famous land ordinance of 1785, the federal government provided for the reservation of section sixteen in each township ^{Land grants} for the maintenance of the public schools. Beginning with Ohio in 1802, each of the public-land States accordingly received section sixteen in every township; while each commonwealth admitted after 1848 received two sections.¹ Title to these lands was vested in the State legislature in trust for the purpose named, and the proceeds arising from their sale was to constitute a permanent endowment fund, the interest to be applied to the support of the public schools. The entire amount turned over to the States was 67,893,918 acres, which, at the traditional price of \$1.25 per acre, gave a perpetual endowment of nearly \$85,000,000. This fund has since been increased in various ways. The revenue accruing from its permanent school fund is commonly apportioned by each State among the various counties, on the basis of the number of children of school age in each county.

In February, 1917, Congress passed an important measure known as the Smith-Hughes Act, which provides federal aid for vocational education. This law establishes a federal Board for Vocational

^{The Smith-Hughes Act of 1917}

¹ Utah received four sections.

Education of seven members: the Secretary of Agriculture, Secretary of Labor, Secretary of Commerce, the Commissioner of Education, and three citizen members representing, respectively, labor, agriculture, and manufactures. The duty of the federal board is to promote vocational education in coöperation with the States, and to administer the federal aid granted to the States under this law. Each State accepting its provisions must establish a State board of control of day-industrial, evening, part-time, continuation, agricultural, and home-making schools. Each State must also agree to appropriate, either through the State or locally, an amount of money equivalent to the sum received from the federal board. In the first year under this act, the federal appropriations amounted to \$1,655,000; and this sum is to be increased annually until the year 1925-1926, when the States will receive seven million dollars from the national treasury in support of vocational education.

Immediately upon its organization, the federal board undertook the establishment of a series of special war training classes. These were designed to fit drafted men not yet called to the cantonments for various occupations necessary to the successful prosecution of the war. Basing its plans upon the experience of the other nations at war, the federal board is now at work upon a program for the vocational training of the soldiers and sailors who become disabled in the defense of their country. The principle underlying this program is to restore these men, handicapped as a direct result of their patriotic service, so as to enable them to resume useful industrial employments.

233. The Federal Bureau of Education. In addition to the generous land and money grants in support of the State school systems, the federal government has aided education by the establishment in 1867 of a Bureau of Education. It is the duty of the commissioner at the head of this bureau to collect and publish statistics concerning the schools of the

United States; and his office publishes an annual report, as well as monographs of great value. The federal government maintains the system of city schools in Washington, D.C.; provides academies at Annapolis and West Point for the education of naval and army officers; maintains schools for the Indians; and supports the Smithsonian Institute, a naval observatory, the geological survey, and other scientific establishments educational in character.

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QUESTIONS AND EXERCISES

1. Quote any provisions of your State constitution concerning free schools or public education.
2. What are the boundaries of the school district in which you live? How many children of school age within this district? How many are enrolled in the public schools?
3. How many members comprise your board of education or school trustees? How chosen? Term? Name the members.
4. Describe the powers of this board: (a) to levy school taxes; (b) to elect a superintendent and teachers; (c) to purchase school sites and erect buildings; (d) to perform other functions of school administration.
5. What amount was expended by your district last year for the support of its schools? How much per pupil? How does this compare with the per capita expenditure in other districts of your State?
6. Is a State school tax levied in your commonwealth? If so, how much revenue did your district derive from this source last year?
7. What amount of school revenue is derived from local taxation in your district? What is the rate of the local tax for school purposes?

8. What is the bonded indebtedness of your school district? For what purpose were these bonds issued?
9. Is there a law in your State compelling children of a certain age to attend school? If so, during what ages is such attendance required and for what term each year? What is the penalty for violation of this law, and upon whom imposed? Who enforces the compulsory education laws?
10. Explain the great importance of public education in a democracy.
11. What obligations do pupils owe to their school? Do they owe any obligation to the community which provides them with free public education?
12. How many high schools in your district? Number of pupils enrolled?
13. Is there county supervision of rural schools in your commonwealth? How is the county superintendent chosen? How are schools supervised in your district?
14. Are text-books furnished free to all pupils in your district? If so, state whether this is required throughout the State, or is optional with local authorities. Give the chief arguments for and against free text-books.
15. Do you have uniform text-books throughout your State? What are the advantages and disadvantages of this policy?
16. What authority grants teachers' certificates in your district?
17. In what ways does your State government control the common-school system?
18. Who chooses your State superintendent of instruction (or commissioner of public schools)? What is his term? Describe his duties.
19. Is there a State board of education in your commonwealth? If so, state the number of members, method of appointment, and term.
20. Describe the powers of the State board of education with reference to: (a) examination and certification of teachers; (b) handling of State school funds; (c) holding teachers' institutes; (d) publication of school statistics; (e) preparation of courses of study and selection of text-books.
21. Name the principal universities and colleges in your State. Classify them into three groups as suggested in Section 220.
22. Are graduates of your high school admitted to these institutions on certificates, or are entrance examinations required?
23. Is there a State university in your commonwealth? If so, how many students are enrolled? Name the various colleges which comprise it. What does it cost the State to maintain it?
24. What aid to public education has your State received from the federal government? What amount did it receive last year under the Morrill Act? Under the Smith-Hughes Act?
25. Does your community maintain classes for vocational training? Why is this work considered so important?

CHAPTER XVII

STATE FINANCE

234. Definition of Finance. Public finance deals with the way in which government acquires and expends its means of subsistence; and hence the subject-matter of this chapter is public expenditure and public income. Under public expenditure we shall consider first, the general purposes for which all governments expend money; and second, the principal items of expenditure by State and local governments.

235. Purposes of Public Expenditures. Public expenditures may be classified on the basis of the functions which governments perform as (1) protective, (2) industrial, (3) humanitarian, and (4) cultural.¹

Protective functions are fundamental in character, including provision for defense, for internal security of person and property, and for protection against ^{Protective} physical or social disease. The protective func- ^{functions}tions generally necessitate large military and naval expenditures, as well as those for courts and police systems.

The industrial functions of government include regulation of industry in the public interest by means of labor and factory laws, and inspection of food products; ^{Industrial} also provision for useful public works, as canals, ^{functions} roads, bridges, and light-houses; and finally, promotion of industry by means of subsidies, bounties, and technical education.

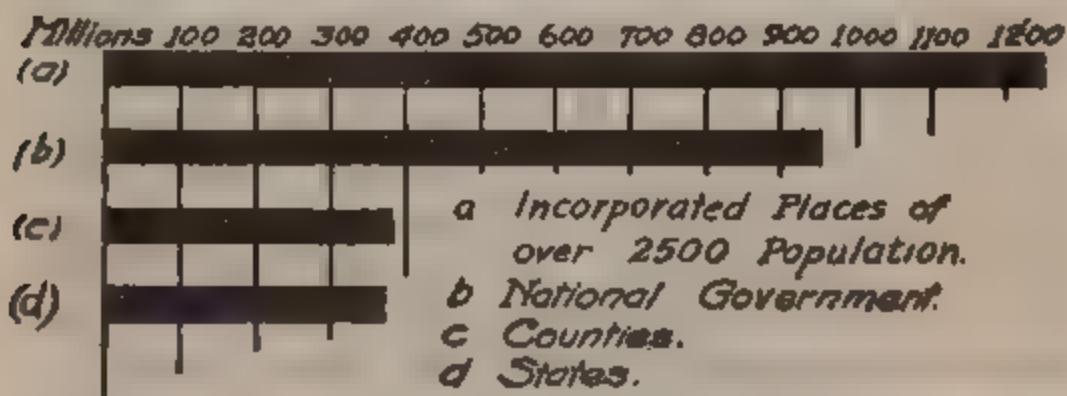
The humanitarian functions include those for the relief of the dependent and defective classes, as paupers, the insane, deaf, and blind; the aiding of sufferers from occasional calamities (as fire, earth- ^{Human.} ^{itarian} ^{functions})

¹ This classification of expenditures is that given by Professor F. M. Taylor of the University of Michigan.

quake, or flood); provision for elementary education; and in a few countries, state-assisted insurance.

The cultural functions are those which serve the higher ^{Cultural} wants, as physical culture and recreation, higher functions education, libraries, art museums, and scientific research.

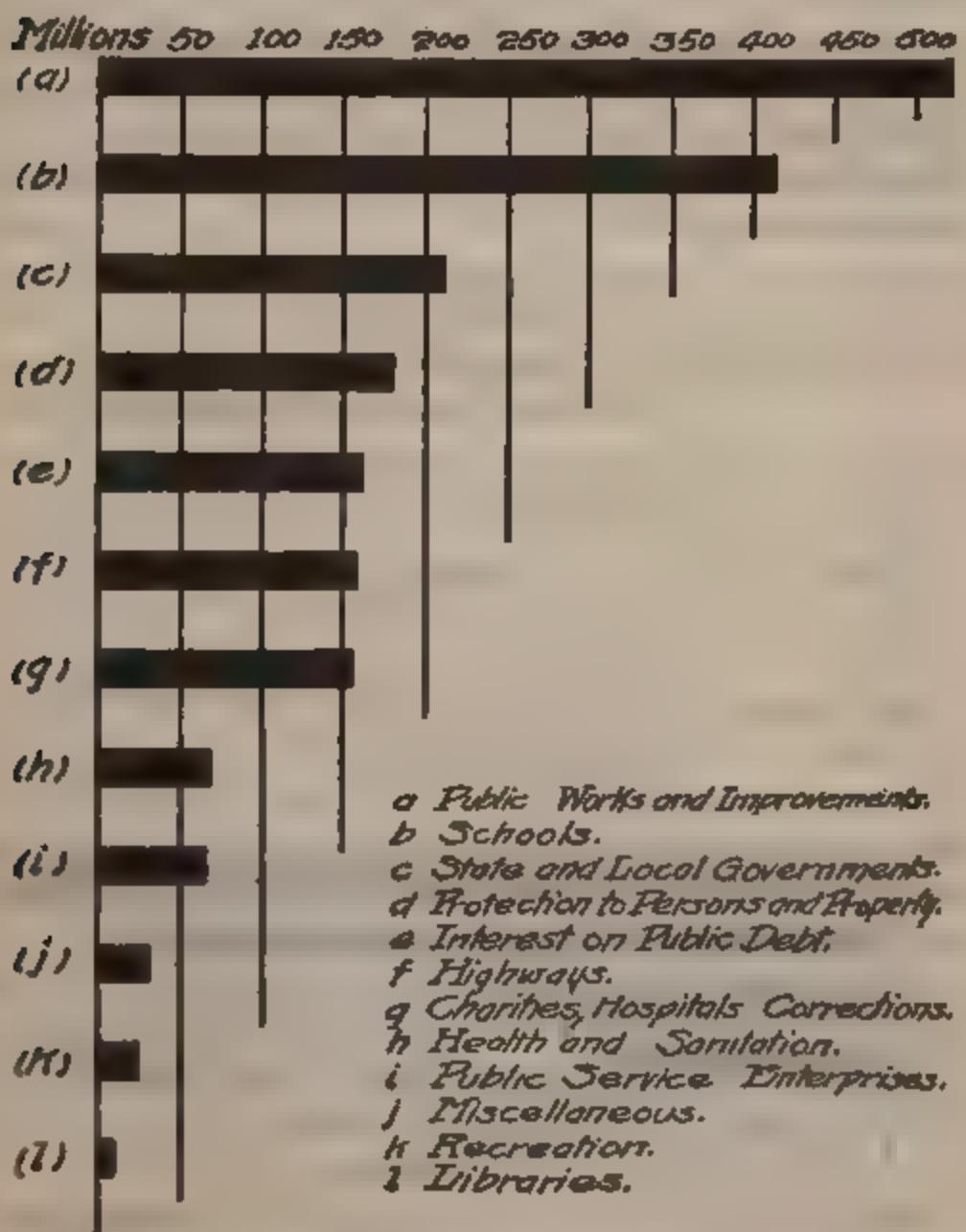
236. Expenditures of National, State, and Local Governments. The expenditures of the national government form about 35 per cent of the total governmental expenditures; those of the State governments about 10 per cent; while local expenditures comprise nearly 55 per cent. In other countries as well as in the United States, the expenditures of local governments form an increasing proportion of the aggregate governmental expenditure, owing to the number and importance of the functions which local units perform.



EXPENDITURES OF NATIONAL, STATE, AND LOCAL GOVERNMENTS

237. State and Local Expenditures. Under our system of government, the chief expense of administration is borne, ^{Objects} not by the State government itself, but by its subdivisions, the counties, townships, and municipalities. Hence a comparatively small part of the total revenue levied and collected under State laws is taken by the commonwealth for its own purposes. The principal expenditures by State governments are for the maintenance of its executive, legislative, and judicial departments, for the State militia; for educational, charitable, and penal

institutions, as State universities, asylums for the blind and insane, and State prisons; for State buildings and public works; and for interest on the public debt. Upon local governments devolves the heavy expense of poor relief, schools and libraries, roads and bridges. In addition, city governments must provide police and fire protection, construct waterworks and sewer systems, pave and light the streets, and maintain public parks and playgrounds.

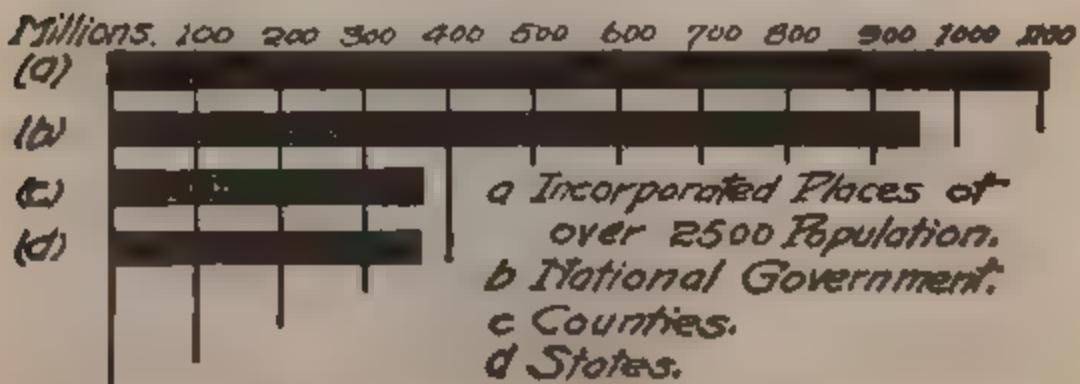


AMOUNT AND OBJECTS OF STATE AND LOCAL EXPENDITURES

238. Sources of Public Revenue. The expenditures of government, like those of individuals, are paid out of income or revenue; and the sources of public income may be grouped under three heads: (1) direct revenue, or that received from public ownership of productive property, or public management of productive industry, or revenue which accrues to government by virtue of its corporate character; (2) derivative revenue, derived from the private incomes of persons or corporations, and paid by them in satisfaction of some revenue law; (3) anticipatory revenue, or that secured by government through the use of its credit, to be afterwards repaid.

The following outline¹ shows in detail the sources of public revenue:—

- | | |
|-------------------------|---|
| 1. Direct revenue | <ul style="list-style-type: none"> a. Public domains b. Public industries c. Gratuities or gifts d. Confiscations and indemnities |
| 2. Derivative revenue | <ul style="list-style-type: none"> a. Taxes b. Fees c. Assessments d. Fines and penalties |
| 3. Anticipatory revenue | <ul style="list-style-type: none"> a. Sale of bonds or other forms of commercial credit b. Treasury notes |



RECEIPTS OF NATIONAL, STATE, AND LOCAL GOVERNMENTS

¹ Adams, H. C., *The Science of Finance*, p. 227.

239. Sources of Direct Revenue. In the United States, direct revenue forms a comparatively small part of public income. Many European countries own agricultural lands, mines, and forests, from which a considerable revenue is derived; but the policy of our government has been to transfer the public domain to individual settlers upon the theory that the national resources would be best developed in this way.

Many foreign governments also derive considerable direct revenue from public industries, as waterworks, gas and electric lighting-plants, street and steam railways, postal and telegraph systems; and also from industries monopolized by government as a means of revenue (fiscal monopolies).¹ In the United States municipal ownership of waterworks systems is common, and many cities also own electric-lighting plants; while the federal government owns and operates the postal system, and has taken charge of the railroads for the period of the war.²

240. Sources of Derivative Revenue. Fees and special assessments form a considerable source of derivative revenue, although relatively much less important than taxation proper. Fees are payments made to cover a part of the total cost of certain governmental activities performed for the benefit of all, but which confer a special benefit upon the individual. For example, there are judicial and legal fees, as court fees, the charges for recording deeds and mortgages, marriage-fees, and the like; administrative fees, including fees for education, when charged; and industrial and commercial fees, as road and canal tolls, harbor dues, and similar charges.

Special assessments, also called "betterment" taxes, are closely related to fees. A special assessment has been defined by Professor Seligman as "a compulsory contribution paid once and for all to defray the cost

¹ As the government monopoly of the manufacture of tobacco in France.

² See Section 292.

of a specific improvement to property undertaken in the public interest, and levied by the government in proportion to the special benefits accruing to the property owner." For example, when a street is paved, or when water-pipes or sewers are laid, in addition to the general public benefit there is a special benefit to the individual on whose property the improvement abuts; and hence it is customary to levy a special assessment covering part or all of the cost against the owners whose property receives the special benefit.

Taxes Taxes may be defined as "ratable burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes."¹ The justification of taxation is the benefit which governments confer upon individuals. In return for the protection which they afford and the public functions fulfilled, governments may justly take from those benefited, through taxation, the means necessary for their support. Taxes are

	Millions	100	200	300	400	500	600	700	800	900	1000
(a)											
(b)											
(c)											
(d)											
(e)											
(f)											
(g)											
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(x)											
(y)											
(z)											

SOURCES OF STATE AND LOCAL REVENUES

¹ Black, H. C., *Constitutional Law*, p. 875. Professor Plehn defines taxes as "general compulsory contributions of wealth levied upon persons, natural or corporate, to defray the expenses incurred in conferring a common benefit upon the residents of the State."

levied in accordance with the theory of *faculty or ability*; that is, individuals are required to share the burden of taxation according to their ability, estimated upon the basis of property or income.

241. General Principles of Taxation. Certain general principles govern the levying of taxes, the following being especially important:—

(1) The rule of *equality*, which prescribes that as far as possible all individuals shall pay taxes according to their respective abilities.¹

(2) The rule of *uniformity*, which means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. "Different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times."²

(3) The tax must be for a *public purpose*, that is, for the support of government and its legitimate objects, and not for the private advantage of individuals.³

(4) The tax must be *authorized* by the legislature, it being a cardinal principle of republican government that taxes can be voted only by the representatives of the people, that is, by the legislative power.

(5) *Jurisdiction* is essential to the validity of the tax; that is, the person or thing taxed must be amenable to the authority of the government making the levy.

(6) *Certainty* should characterize every tax; that is, the time, manner, and amount of the payment should not be arbitrary, but fixed and known to all.

(7) *Convenience* is another desirable characteristic; the tax should be collected at a time when it will be most convenient for the contributors to pay; and in general should cause as little inconvenience as possible.

(8) *Economy* should characterize all tax levies; the tax should not be too difficult of administration, nor the cost of collection excessive.

242. Extent of the Taxing Power. The largest discretion is allowed the legislative power in determining the basis on which taxes shall be laid; and all property, tangible or intangible, is subject to taxation. "Taxes may be levied on

¹ Black, H. C., *Constitutional Law*, p. 392.

² "If the end be not public, it matters not that the individuals for whose benefit the tax is laid are numerous, nor that the object is to afford relief from the consequences of a pestilence, fire, inundation, or other general and widespread calamity." — Hale, J. L. C., *American Constitutional Law*, I, 579.

real property or personal property, on occupations, on incomes, on inheritances, and on various other rights, benefits, and privileges which are enjoyed under the protection and sanction of organized society."¹

The power of the several commonwealths to tax is a general power, subject only to certain express and implied limitations in **Limitations** the national and State constitutions, and to the limitations imposed by the nature of our form of government. Six important limitations are imposed by the federal constitution, or by the nature of the federal government; and additional limitations are found in many State constitutions.

By express provisions of the federal constitution, the commonwealths are forbidden, without the consent of Congress (1) to **Federal control of commerce** lay any imposts or duties on imports or exports except those absolutely necessary for the execution of State inspection laws,² or (2) to lay any tonnage duty.³ Moreover, (3) an implied restriction on the power of the commonwealths to tax foreign or interstate commerce is found in the provision giving Congress power to regulate foreign and interstate commerce.⁴

(4) Another implied limitation arises from the guaranty of the federal constitution that "the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States."⁵ This provision prevents a State from discriminating against citizens of other commonwealths by levying upon the property or business of non-residents a higher tax than is levied upon corresponding property or business of its own citizens.⁶

(5) State governments may not tax the agents or instrumentalities by which the federal government performs its functions, because if allowed this power they might cripple or even wholly defeat the national authority. Hence a State government may not impose a tax upon the operations of a bank chartered by Congress;⁷ nor upon the salary of a federal officer; nor upon the evidences of indebtedness issued by the national government.⁸

¹ McClellan, E., *Constitutional Law*, p. 127.

² Constitution, Art. I., Sec. 10, Par. 2.

³ Constitution, Art. I., Sec. 10, Par. 3.

⁴ Constitution, Art. I., Sec. 8, Par. 3.

⁵ Constitution, Art. IV, Sec. 2, Par. 1.

⁶ *Ward v. Maryland*, 12 Wall 410; *Welton v. Missouri*, 91 U. S. 275; *Walling v. Michigan*, 116 U. S. 448; *Lay v. Baltimore*, 100 U. S. 494.

⁷ *M'Clatch v. Maryland*, 4 Wheaton, 316; *Thayer's Cases*, II, 1840; *Osborn v. U. S. Bank*, 9 Wheaton 758.

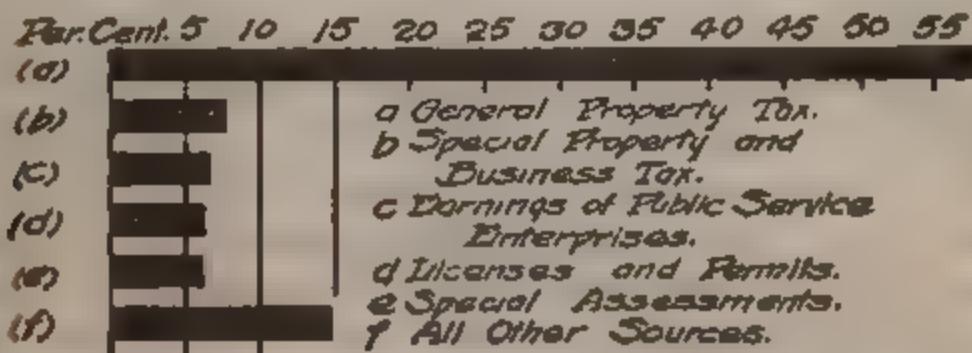
⁸ This implied limitation is reciprocal for similar reasons the federal government cannot lay a tax upon the agents or instrumentalities of the State governments.

(6) If, as sometimes happens, the State and federal governments tax the same thing, the federal tax must first be satisfied. This limitation arises from the subordinate position of the commonwealths in the federal plan.

(7) Many State constitutions limit the amount which may be raised by taxation to a certain per cent of the valuation of taxable property; and also provide that no greater revenue shall be raised than the current needs of government require.

(8) The constitutions of many commonwealths exempt certain property from taxation, including that of educational institutions, public hospitals, charitable institutions, church property used for religious purposes, public property used for public purposes, and personal property to a limited amount (generally about two hundred dollars for each individual).

243. Classification of Taxes. Taxes may be classified in various ways, the most common division being into direct and indirect taxes. Direct taxes are those levied immediately upon the persons who are to bear the burden. The law contemplates that the taxpayer shall also be the tax-bearer, and the burden of taxation cannot ordinarily be shifted. The most important direct taxes are the general property tax, mortgage tax, inheritance tax, corporation, poll, and income taxes.



PER CENT SOURCES OF STATE AND LOCAL REVENUES

Indirect taxes are those levied upon commodities before they reach the consumer. The taxpayer is not the real tax-bearer, since the tax is ultimately paid by the consumer in the form of a higher price. The

principal indirect taxes are customs duties, excise or internal revenue taxes, franchise and license taxes.

The federal government derives its revenue almost exclusively from indirect taxes (customs duties and excises). State and local revenues are derived chiefly from direct taxes — the general property tax, inheritance, and corporation taxes; together with a relatively small amount from such indirect taxes as franchises and licenses.

244. Assessment of General Property Tax. Throughout the Union, about sixty per cent of State and local revenues is derived from the general property tax, which in theory is levied on the entire amount of property, real and personal, owned by taxpayers. The first step in administering the general property tax is that of assessment, or placing a valuation upon taxable property. Local assessors are generally elected by the city, township, or county; and these officers inspect and place a value upon the property of each taxpayer. To aid in this work, taxpayers are ordinarily required to make a declaration under oath of the amount of their personal property, these declarations being subject to correction by the assessors.

Real estate¹ and visible personal property (as furniture, stock in trade, live stock, or other farm capital) can be readily discovered by the assessors; but it has proved exceedingly difficult to reach intangible personal property, as notes, bonds, stocks, and mortgages. Hence the most valuable portion of personal property owned by the wealthiest members of the community largely escapes taxation. In the United States as a whole, probably only one fifth of all personal property is reached under the general property tax. Both real and personal property are assessed far below their true values, real estate being generally rated at from one third to three fourths of its actual value.

¹ Real estate includes both land and the permanent structures resting upon it.

245. Equalization. The work of local assessors is commonly subject to correction by a county board of equalization, since otherwise property in one section of the county may be assessed at a lower valuation than property in other sections, thus placing an unequal burden upon taxpayers. Furthermore, there is generally a State board of equalization charged with the duty of reviewing and equalizing the valuations within the various counties; for if the property in one county is undervalued as compared with the average rate of valuation throughout the commonwealth, the county escapes to that extent from its just burden of State taxation.

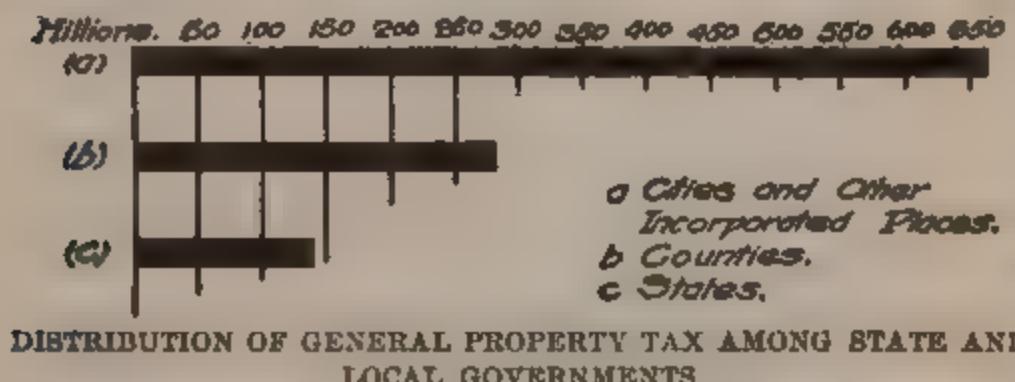
246. Levy and Collection of Taxes. After the process of assessment has been finished, the next step is the levy of the tax, or the fixing of the rate. The amount of revenue to be raised is first determined by the proper authority of each taxing area — generally by the board of education for the school district, by the township trustees for the township, by the town-meeting for the town, by the council for the municipality, by the county commissioners for the county, and by the legislature for the State. The rate of taxation is then determined by calculating the ratio between the estimate of necessary funds and the total assessed valuation of taxable property within the district concerned. For example, if the total State expenditures are estimated at three million dollars, and the assessed valuation of all taxable property in the commonwealth is three billion dollars, the rate for State purposes will be the former sum divided by the latter, or one tenth of one per cent, or one mill on the dollar. In the same manner the rates for the county, town or township, city, village, or school district are separately determined by finding the ratio of the assessed value of taxable property within the district to the revenue required by the district.

The State auditor certifies the State tax rate to the county auditors or clerks; and the latter add to this the

rates authorized for local purposes. The sum of these rates ^{Duties of auditor} will be the percentage of each taxpayer's property required for the support of State and local government. For example, the rates for taxpayers in rural and urban communities may be as follows:—

RURAL TAXPAYER ¹		URBAN TAXPAYER	
Rate	Mills	Rate	Mills
School.....	4	School.....	9.7
Township.....	1.25	Municipal.....	16.95
County.....	4.605	County.....	4.605
State.....	1.345	State.....	1.345
Total.....	11.2	Total.....	32.6

All taxes are collected by local officers, generally by the township or county treasurer, the township supervisor, ^{Collection of taxes} the selectman, constable, or special tax collectors. The total amount of State and local taxes collected by these officers is then distributed, the respective shares being turned over to the township (or city) treasurer, the county and the State treasurers.



DISTRIBUTION OF GENERAL PROPERTY TAX AMONG STATE AND LOCAL GOVERNMENTS

If a taxpayer fails to pay his tax bill at a specified date, the property upon which the tax is levied is delinquent. ^{Delinquent} A penalty in the form of an increased rate is ^{taxes} then imposed, and if the bill remains unpaid the property may be sold to satisfy the claim. If sold, the ex-

¹ Thus on property assessed at \$1000, the taxpayer in the rural community would pay \$11.20, while on the same amount of property the urban taxpayer would pay \$32.60.

cess over the amount of taxes due is given to the owner; and ordinarily he has the right within a limited period (generally two years) to repurchase the property at the sale price plus certain penalties.

247. Defects of the General Property Tax. The defects of the general property tax are so serious that this form of tax has been severely condemned by all students of finance, and by most administrative officials. Professor Seligman declares that "the general property tax as actually administered to-day is beyond all peradventure the worst tax known in the civilized world."

Its chief defects may be summarized as follows:—

(1) The general property tax is bad, since it takes property itself as a criterion of taxpaying ability; whereas not property, but the income which property yields, ^{Wrong in theory} is the best index of taxpaying power.

(2) The general property tax is defective in practice, since it fails to reach the most valuable portion of personal property — intangible property. Hence it imposes an undue burden upon real estate, and upon ^{Unjust in practice} those engaged in agriculture, as compared with those in other pursuits.

(3) The most serious defect in the general property tax arises from the difficulty of assessment. The greatest inequalities prevail in the valuation of property in ^{Unequal valuations} the different townships within the county, and in ^{valuations} the counties composing the State. Hence one township may bear an undue burden of county taxation as compared with other townships, and counties often bear unequal burdens of State taxation.

(4) Finally, the general property tax causes public demoralization. Since taxpayers are commonly required to declare their taxable property under oath, those ^{Public de-moraliza-tion} who are conscientious are taxed heavily, while others escape a large share of their just burden.

248. Mortgage Taxes. In several commonwealths a tax

is levied upon capital invested in mortgages. For example, in New York a small tax is levied upon mortgages at the time of record, after which they are exempt from further taxation. The policy prevailing in some States of taxing mortgages annually at the local tax rate is both unjust and difficult of enforcement. Such a tax involves double taxation unless the mortgagor is taxed only on the value of his property less the amount of the mortgage.

249. Inheritance Taxes. Inheritance taxes are those imposed upon property inherited from the estate of a deceased person. This form of taxation is extensively used in Great Britain, Switzerland, and Australia; and it also prevails in nearly all of the States of the Union. In levying inheritance taxes, the practice is to exempt small estates entirely, and frequently to exempt that portion of the estate which passes to direct heirs.

250. Corporation Tax. The failure of the general property tax to reach intangible personal property, such as stocks and bonds in the hands of individual owners, has been partially remedied in some commonwealths by a tax levied upon corporations, which from their nature must maintain an official record of property and earnings.

The corporation tax is sometimes a general one imposed upon all corporations doing business within the State. More often it is levied upon those industries which are monopolistic in character, and hence superior to the normal control of commercial forces; or which for some other reason bear a public or quasi-public character. Illustrations of these are (1) the railway, telegraph, telephone, and express industries; (2) bridge companies and corporations owning rolling stock and terminals; (3) banks, building and loan associations, and insurance companies; and (4) municipal monopolies, as street railways, gas and electric-lighting companies.

The basis of the corporation tax is in many instances the

capital stock at its par or market value; and often the bonded indebtedness is also included. In other ~~most~~ States, the volume of business transacted, the gross earnings, the dividends and interest, or the net earnings, are taken as the basis. In some commonwealths, as in New York, a tax is levied upon the organization of corporations as well as upon their annual earnings.

251. Poll or Capitation Tax. The poll or capitation tax is a uniform contribution levied against individuals as such. This generally proves a very difficult tax to collect; and it is an unjust form of tax, since the same amount is exacted from each person, irrespective of his ability to pay. Many commonwealths still retain the poll tax, the levy being two or three dollars upon all males over twenty-one years of age.

252. Income Taxes. The income tax is a tax of a certain per cent on the annual clear income of each individual. Incomes below a certain amount are commonly exempt, and the rate of taxation is often progressive. An income tax in some form is levied in seven States: Massachusetts, Mississippi, North Carolina, Oklahoma, South Carolina, Virginia, and Wisconsin.

253. License Taxes. License taxes include "all payments which the law makes a condition to the transaction of business, or to the following of a profession, a trade, or any industrial calling." Except in the Southern States, where licenses are required for many different kinds of business, the license tax is generally imposed upon occupations which present peculiar difficulties from the point of view of police regulation, as the business of taxicab drivers, draymen, and peddlers.

254. Franchise Taxes. A franchise is an exclusive right or privilege granted by government, as the right to supply gas, water, or electric light within a certain area, or the right to use the streets of a city for the operation of a street-railway system. The chief value

of street-railway property is not the cost of rolling stock and rails, but rather the exclusive right to use the streets for the purpose of carrying passengers. The franchise tax, then, is a tax upon a value arising from an exclusive privilege — in other words, upon a value which society itself creates. Throughout the entire history of American municipalities, franchises have been given away with utter disregard of their value and the public interest; but the present tendency is to secure for the city some return for the values arising from municipal growth and development.

255. Reforms in Taxation. The reform in taxation most earnestly advocated by students of this subject consists in *Sources of federal taxation* the assignment of definite and exclusive sources of income to each of the several grades of government. Thus to the federal government would be assigned the revenue from customs duties and excise taxes, supplemented in case of need by a federal income tax.

State revenue should be derived from taxation of corporations, inheritance taxes, and licenses. The effort to reach *Sources of State taxation* intangible personal property through the general property tax should be entirely abandoned, and the commonwealth should leave to local governments all taxation of real estate. In this way many of the defects of the general property tax would be remedied. The antiquated and unjust poll tax should be abandoned entirely.

The revenue for rural local governments should be derived chiefly from the tax upon real estate, supplemented, *Sources of local taxation* if necessary, by a tax upon visible personal property. In cities large revenues should be derived from franchises and licenses, supplemented in case of need by a small tax upon real estate.

256. Borrowing Power of State Governments. In addition to the income obtained from the foregoing *Anticipatory revenue* sources, States may obtain revenue through the use of their credit, or in other words, may borrow money.

Such revenue is called anticipatory, and "its legitimate use is confined to making headway against a fiscal exigency, or to the providing of capital for public investment."¹ State and local debts are generally incurred for the construction of public works, although sometimes they are due to deficiencies in taxation. Debt-making means the distribution of the burden of heavy expenditures over a later period, the cost of this postponement being the payment of the annual interest.

Because of the recklessness of legislative bodies in contracting debts, most constitutions limit the amount of indebtedness that may be incurred by State and local governments to a certain per cent of the valuation of taxable property. Limitations are often imposed as to the objects for which State governments may borrow money; and a number of constitutions provide that no money may be borrowed unless the law authorizing the loan be ratified by a popular vote.²

State governments generally borrow money through the issue of bonds, since the federal constitution expressly prohibits the commonwealths from issuing due-bills, or paper notes of any kind intended to circulate as money.³ Provision is commonly made for the redemption of bonds through the accumulation of a sinking-fund; that is, a portion of the annual income is set aside each year in a special fund which is invested in interest-bearing securities, and ultimately applied to the extinguishment of the debt.

257. History of State Debts. Shortly after the adoption of the national constitution (1789), the federal government assumed the Revolutionary debt of the States amounting to about \$21,000,000; and for thirty

Constitu-
tional lim-
itations

Method of
borrowing

Early in-
debtedness

¹ Adams, H. C., *Science of Finance*, p. 22.

² Commenting upon these restrictions, Bryce declares that "one feels, in reading these multiform provisions, as if the legislature was a rabbit seeking to issue from its burrow to ravage the crops wherever it could, and the people of the State were obliged to close every exit, because they could not otherwise restrain its inveterate propensity to mischief." — *The American Commonwealth*, I, 522.

³ Constitution, Art. I, Sec. 10, Par. 1; Craig v. Missouri, 4 Peters, p. 410.

years afterwards there was little State debt. Then came the era of extensive canal building, followed by railroad building with State aid, which resulted in a rapid increase of State indebtedness. After the panic of 1837 a number of commonwealths repudiated a part of their debts, to the amount of about \$14,000,000.

The Civil War created a large indebtedness on the part of the commonwealths, as well as the federal government; ~~Civil War period~~ but the loans incurred in aid of rebellion by the eleven seceding States became void through the adoption of the fourteenth amendment. After the war the Southern States, and also two Northern commonwealths, repudiated indebtedness amounting in all to \$160,000,000.¹

State debts are now decreasing, and a number of commonwealths are practically free from debt. One reason for ~~Present conditions~~ this decline is the increase of municipal and local indebtedness, owing to the increased activities which local governments are called upon to perform. The total debt of local governments throughout the Union is now about ten times the aggregate State indebtedness.

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¹ Most of this amount was contracted just after the war by the carpet-bag governments of the South.

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QUESTIONS AND EXERCISES

1. What restrictions are imposed by your State constitution upon (a) the power to levy taxes; (b) the power to borrow money?
2. Study the balance sheet or financial statement of your State government for last year, and report upon the following: (a) the amount and sources of revenue for the year, arranged in the order of their importance; (b) the chief items of expenditure.
3. Make a similar report concerning the financial statement of your city or county.
4. State which of the following kinds of taxes are levied in your State: general property tax, mortgage tax, inheritance tax, corporation tax, poll or capitation tax, income tax, license or business tax, franchise tax.
5. What is the total assessed valuation of property in your city or county? What is the tax rate for city, school, county, and State purposes? Taking the assessed valuation as a basis, figure the amount of revenue which each area would receive at the respective rates.
6. Study the method of assessing property and of levying the general property tax in your community. Compare with the process described in Sections 244-246.
7. Are there county and State boards of equalization in your commonwealth? If so, how are they chosen? How may an assessment be increased or decreased?
8. What portion of one's real or personal property is exempt from taxation in your State? What is the reason for the exemption?
9. Does personal property bear its share of taxation in your community, or does the greater part of it escape taxation? Can you suggest a remedy?
10. Prepare a graphical chart showing fluctuations in the tax rates in your city or county during the last twenty years.
11. Do rents tend to rise and fall as the tax rate increases or decreases? Why?
12. What penalty is imposed in case of delinquent taxes?
13. By whom are taxes assessed in your city or county? To whom paid?
14. If corporation taxes are levied in your State, give the rate of the tax, and the basis upon which it is levied (capitalization, earnings, etc.).
15. If inheritance taxes are levied, state the rate, exemptions, etc. Same for income taxes.
16. Why are poll or capitation taxes objectionable?
17. Are franchises taxed in your city? What is the justification of this form of tax?

18. Does the right to vote in your State depend upon the payment of any kind of taxes? Are all taxpayers voters?
19. Compare the system of taxation suggested in Section 255 with that actually in force in your State.
20. What is the amount of your State debt? Of your county debt? Of your city debt? Of your school-district debt? How are these debts to be paid?
21. For what amount are bonds generally issued by your local government? What is the usual rate of interest? How are the bonds sold?
22. For what purposes are governments justified in issuing bonds? Is it proper to issue bonds to defray current expenses?
23. Bring a government bond to class for examination and study.

CHAPTER XVIII

ORIGIN OF THE FEDERAL GOVERNMENT

258. Beginning of the Federal Union. From the stand-point of constitutional law, the Federal Union as it exists to-day dates from 1789, when our national constitution went ~~three periods of union~~ into effect. Historically its origin is much earlier, dating back to the crude attempts at union during colonial days (1643-1775). Next came the period of Revolutionary union (1775-1781), followed by constitutional union, first under the Articles of Confederation (1781-1789), then under the federal constitution.

259. Conditions affecting Colonial Union. * Tendencies toward union existed in the American colonies almost from the beginning of their history. Nearly four fifths of the colonists were of English descent, speaking the same language, and except the Roman Catholics in Maryland, professing the Protestant religion. Not only were the colonists united by the ties of a common history, language, and religion, but all were governed by the English system of common law, modified to meet colonial conditions; and they claimed as their birthright the privileges which the common law recognized as belonging to all Englishmen. Another influence tending toward union was the fact that the colonists were threatened by a common enemy — first the Indians, then the Dutch and French, and finally the mother country itself.

On the other hand, several conditions operated to prevent an early and permanent union. From its establishment each colony had been politically separate from every other, and the strong feeling of local independence checked for many years the inclination toward union. The geographical situation of the colonies also tended to keep them separate. Communication either by land or water was both difficult and dangerous, and the lack of intercourse with their neighbors fostered a spirit of provincial narrowness and exclusion. Industrially also, the interests of the colonies were distinct. In New England, shipbuilding was the leading industry; while at the South,

agriculture carried on by slave labor was the chief source of wealth.

260. The New England Confederation. In 1643 the condition of affairs in England¹ was such that the mother country could do little to protect the colonies from the danger of attack by the Indians and the Dutch. Accordingly, four of the New England colonies (Massachusetts Bay, Plymouth, Connecticut, and New Haven) united in a league for the purpose of mutual defense, as well as for the extradition of criminals and fugitive servants. The affairs entrusted to the confederate government were managed by an advisory board, on which each colony was represented by two commissioners. This league continued in existence for forty years and rendered effective service, especially in the wars against the Indians. More important still, it accustomed the colonies to united action and showed them the benefits of union.

261. The Albany Plan of Union (1754). During the long struggle with the French, several plans were brought forward for a closer union of the colonies. In 1754 delegates from seven colonies met at Albany in answer to a summons from the Lords of Trade. The Congress finally adopted the plan presented by Benjamin Franklin for a colonial union to be established by Act of Parliament. Although unanimously adopted by the Congress, the proposed plan was rejected both in England and in America. The colonies distrusted it as giving too much power to the crown, while the British government considered it too democratic.

262. Stamp Act Congress (1765). The dormant spirit of union in the colonies was finally aroused by the adoption of a new British colonial policy. The Stamp Act passed by the British Parliament in 1764 met with bitter opposition from the colonists, who claimed that such a tax could not be constitutionally imposed except by their own legislatures. At the suggestion of the Massachusetts House of Representatives, nine colonies sent delegates to the Stamp Act Congress (1765). This Congress drew up an address to the king, and adopted a declaration of rights setting forth that "the people of these colonies are not, and from their local circumstances cannot be, represented in the House of Commons"; and that no taxes "can be reasonably imposed on them but by their respective legislatures." The Stamp Act Congress of 1765 marks one of the

¹ The period from 1642 to 1649 marked the struggle between Charles I and the Long Parliament, ending in the execution of the king and the proclamation of the Commonwealth.

most important steps in the development of the spirit of union — so important that it has been called the day-star of the American Union.

263. Growth of Spirit of Resistance. The obnoxious Stamp Act was repealed in March, 1766, but the British government did not abandon its position on the subject of taxation. Coupled with the repeal of the Stamp Act, Parliament had passed a resolution affirming its right to legislate for the colonies "in all cases whatsoever,"¹ Within the next few years other revenue acts were passed, including the unpopular tax on tea; and in 1773, following a suggestion made several years before by the Massachusetts legislature, committees of correspondence were formed in the various colonies to secure coöperation in resisting the aggressions of Great Britain. These committees were appointed by the colonial assemblies, and mark another important step toward a political union of the colonies.

264. First Continental Congress (1774). The first Continental Congress owed its origin to the series of repressive measures adopted by Parliament in order to discipline Massachusetts. A general congress to secure redress of grievances had been proposed by Virginia in May, 1774, but the definite call came from Massachusetts in June of the same year. All the colonies except Georgia were represented.

In September, 1774, the fifty-five delegates assembled at Philadelphia. They drew up a declaration of rights and grievances, together with a petition to the king requesting the repeal of the obnoxious laws; and recommended that until redress of grievances was secured, the colonists should neither buy from nor sell to the people of Great Britain. This non-importation agreement or "Association" was subscribed to by each member for himself and the colony he represented, and virtually marks the beginning of the Federal Union. Congress adjourned after recommending that a similar body be convened at Philadelphia in May of the following year, in case the colonial grievances were not redressed in the meantime.

265. The Second Continental Congress (1775-1781). The Second Continental Congress, most of whose delegates were chosen by popular conventions, assembled in the state house at Philadelphia on May 10, 1775. By this time the battle of Lexington had been fought, and an army

¹ This act Pitt called a resolution "for England's right to do what the Treasury pleased with three millions of freemen."

of patriots was laying siege to Boston. Congress at once assumed revolutionary powers, which were exercised with the acquiescence of the people during the next six years. It organized an army and chose Washington commander-in-chief; raised a navy; licensed privateers; issued the Continental Currency, pledging the faith of the country to its redemption, established a treasury department and post office; sent representatives to France and other countries; adopted the Declaration of Independence; gave advice concerning the formation of State governments; concluded the treaty of alliance with France; and proposed to the States the Articles of Confederation, the adoption of which in 1781 legalized the Revolutionary Union. In short, the Second Continental Congress assumed and exercised all the sovereign powers necessary to the successful maintenance of the Revolutionary cause, and this *de facto* government was acquiesced in by the people.

{ 266. **Formation of the Confederation.** On the same day that Congress appointed a committee to draw up the Declaration

Ratification of Articles of Independence (June 11, 1776), a second committee consisting of one member from each State was chosen to

draw up a plan of Confederation. On July 12, 1776, this committee reported a plan of union supposed to have been drafted by John Dickinson, and after some delay it was adopted by Congress (November 15, 1777), and sent to the States for ratification. By July, 1778, ten States had agreed to the Articles of Confederation (which were only to be binding when all the States had ratified). By May, 1779, all had ratified except Maryland; and this commonwealth steadfastly refused to give her sanction unless her more powerful neighbors — especially New York and Virginia — should cede to the general government their claims to the western lands. New York finally relinquished her claims to the western domain, and Virginia promised similar action; whereupon Maryland gave her ratification, and on March 1, 1781, the Articles went into effect.

267. **Character of the Confederation Government.** The new government was a confederation or league of States, rather

A League of States than a federal government such as we have to-day. The States relinquished some of their sovereign pow-

ers, no commonwealth being permitted to send ambassadors, make treaties, maintain an army, or levy war. On the other hand, the Articles expressly declared that "each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this federation delegated to the United States in Congress assembled." Each commonwealth whether large or small had but one vote in Con-

gress; and the Articles could only be amended by the unanimous consent of the State legislatures — a provision which made amendment practically impossible.

A striking feature of the new government was that it did not follow Montesquieu's theory of the division of governmental powers among executive, legislative, and judicial departments. There was no national executive or judiciary, ^{The Congress} and legislative powers were vested in a Congress of a single house. To this Congress each State sent not less than two nor more than seven delegates, chosen by its legislature for a term of one year, but subject to recall at any time. Delegates were paid by the State governments. Each commonwealth had one vote, which was determined by a majority of the delegates present when a vote was taken.

The legislative powers of Congress included the sole and exclusive power to determine peace and war; to send and receive ambassadors; to form treaties and alliances; to establish rules concerning captures on land and water; to ^{Powers of Congress} grant letters of marque and reprisal in time of peace; to appoint courts for the trials of piracies and felonies committed on the high seas; to establish courts of final appeal in cases of captures; to decide on appeal any dispute between two or more States concerning boundary, jurisdiction, or other causes; to make requisitions upon each State for its quota of troops or taxes; to borrow money and emit bills on the credit of the United States; to regulate the alloy and value of coins issued by Congress or the States; to fix the standard of weights and measures; to regulate relations with the Indians; to establish post offices; to appoint and commission the higher officers of the army, and all naval officers; and to make rules for the government of the land and naval forces. The Articles also provided for interstate rights of citizenship, for the extradition of criminals, and for according full faith and credit in each commonwealth to the judicial acts and proceedings of all other commonwealths. For the exercise of the most important of these powers the consent of nine States was necessary; and all questions (with the exception of adjourning from day to day) required the assent of a majority of the States.

268. Defects of the Confederation. The government established by the Articles of Confederation was fatally defective both in organization and in powers. The concentration of all governmental authority in a legislature consisting ^{Defects in structure} of a single house, the absolute equality in Congress of all States large or small, the short term of the delegates, coupled with the provision for their payment by the States and the right

of recall, and finally the provision requiring the assent of nine commonwealths for all important legislation, and the consent of all for any amendment of the Articles, — these constituted most serious defects in the structure of government, defects which could only be remedied by a new constitution.

But the most fatal weakness of the Confederation government was that the nominally large powers of Congress could not be brought to bear directly upon the individual citizen.
Lack of necessary powers The general government could reach the individual only through the action of the State governments; and it had no power to coerce a State. Congress might declare war, and make requisitions upon the States for their quotas of troops; but it could not enlist a single soldier. Congress might incur indebtedness, and ask the States for the sums necessary for the support of government; but it could not raise a dollar by taxation. Congress could make treaties, but it could not compel their observance by the States. In short, as one writer has said, Congress could declare everything but do nothing.

269. Failure of the Confederation Government. Even under the stress of war and the pressure of common dangers, the Confederation government was feeble and inefficient:
Inadequate revenue and with the return of peace it soon lapsed into a state of impotence. One historian asserts that "the period of five years following the peace of 1783 was the most critical moment in all the history of the American people."¹ Foremost among the causes which led to the breakdown of the Confederation was its lack of power to raise money with which to pay the national debt (amounting to about \$42,000,000), or even to secure the funds necessary for the ordinary expenses of government. Revenue could be secured only through requisitions upon the States; but in the years 1782-83, requisitions amounting to \$10,000,000 yielded less than \$1,500,000. As a result Congress could not pay the large foreign debt nor even the soldiers of the Continental Army, save in certificates of indebtedness. In 1783 Congress found itself forced to leave Philadelphia and take refuge at Princeton, on account of the riotous conduct of some eighty Pennsylvania soldiers of the line, who had become mutinous at their failure to receive pay.

Another serious weakness of the Confederation arose from its lack of power to regulate commerce, either foreign or domestic. Each State taxed imports as it chose, with the result that foreign and domestic commerce was in a state of chaos. Moreover, while Congress nominally had power

¹ Fiske, John, *The Critical Period of American History*, p. 55

to conclude treaties, foreign countries declined to negotiate with a government powerless to compel their observance. Thus "our diplomacy failed because our weakness had been proclaimed to the world. We were bullied by England, insulted by France and Spain, and looked askance at in Holland."¹

Within the commonwealths, industrial and commercial distress everywhere abounded, and in some sections social disorders threatened the annihilation of all government. Nearly all the States were issuing worthless paper money; several had passed laws impairing the obligation of contracts; Internal disorder and finally, in Massachusetts a large portion of the debtor class took up arms to prevent the holding of courts and the collection of debts (Shays' Rebellion, 1786-87). Everywhere State was arrayed against State, section against section; New England against the South over the question of trade with Great Britain, the East against the West on the subject of commerce with Spain and the navigation of the Mississippi.

Attempts were made in 1781 and again in 1783 to amend the Articles so as to confer upon Congress power to levy duties upon imported goods; but each time the amendment was defeated by the selfish opposition of a single State — Rhode Island refusing to consent to the first proposal, and New York to the second. In 1784 Congress proposed a third amendment giving it power to pass commercial laws discriminating against foreign countries which refused to make commercial treaties with the United States — a measure aimed particularly at Great Britain; but to this plan several States refused assent.

By 1785 it was apparent that the Confederation was on the verge of collapse. Congress had declined both in numbers and character. The ablest men would no longer consent to serve as delegates, and it was almost impossible to secure a quorum for the transaction of business. "There is in America no general government," reported the agent of France in 1784; and the statement was almost literally true. Congress was powerless to compel Great Britain to carry out the provisions of the peace treaty, or to secure their observance on the part of the States. The Confederation government could command neither respect abroad nor obedience at home; and by 1786 its break-down was so complete that it was plain that the union must be strengthened, or give way to a condition of anarchy and civil war.

¹ Fiske, John, *The Critical Period of American History*, p. 145.

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QUESTIONS AND EXERCISES

1. Prepare a report upon the formation and history of the New England Confederation.
2. Discuss fully the proposed union of 1754 (Frothingham, Richard, *Rise of the Republic of the United States*; MacDonald, William, *Select Documents*, I, 253-257.)
3. Prepare a report upon the work of the committees of correspondence.
4. Which body exercised greater authority, the Second Continental Congress or the Congress under the Articles of Confederation?
5. Why is the government under the Continental Congress called a *de facto* government?
6. What were the causes of armed resistance to Great Britain as set forth in the Declaration adopted by the Second Continental Congress? (MacDonald, William, *Select Documents*, I, 374-381.)
7. What great territorial ordinance was adopted by Congress under the Articles of Confederation?
8. Describe the commercial discriminations of the States under the Articles of Confederation. (Fiske, John, *Critical Period of American History*, pp. 142-147.)

CHAPTER XIX

THE FORMATION OF THE CONSTITUTION

270. The Alexandria Conference (1785). Many events, including Shays' Rebellion and the failure of the proposed impost amendment, combined to bring about the Constitutional Convention of 1787; but the immediate cause was the effort of certain States to reach an agreement concerning matters of navigation and commerce. Two years earlier (March, 1785), commissioners appointed by Maryland and Virginia had assembled at Alexandria to form an agreement concerning the navigation of Chesapeake Bay and the rivers common to both States. They also took up other matters of general policy, recommending to the two States uniformity of commercial regulations and a uniform currency. The commissioners realized that the consent of the other commonwealths was necessary in order to make these recommendations effective; and the assemblies of Maryland and Virginia accordingly proposed that commissioners from all the States be invited to meet in a general convention for the purpose of adopting uniform commercial regulations.

271. The Annapolis Convention (1786). In response to the invitation of Virginia, twelve commissioners representing five States¹ — New York, New Jersey, Pennsylvania, Delaware, and Virginia — convened at Annapolis in September, 1786. The commissioners saw clearly that no important results could be accomplished unless more States were represented; and they realized that the subject of commerce was intimately connected with other matters likewise in need of adjustment.

Accordingly, the convention adopted a report, probably drawn by Hamilton, recommending that a general convention be held at Philadelphia on the second Monday of May, 1787, "to take into consideration the situation of the United States," and to devise the measures "necessary to render the constitution of the federal government adequate to the exigencies of the Union." This report was addressed

¹ Nine States had selected commissioners, but only those from five States attended.

to the legislatures of the five States represented, and copies were also sent to Congress and to the executives of the other eight commonwealths. Congress hesitated for some time to indorse the recommendation for a convention; but at length, after several States had appointed delegates, adopted a resolution (February 21, 1787), declaring the desirability of calling a convention on the second Monday of the following May, "for the sole and express purpose of revising the Articles of Confederation."

272. The Constitutional Convention (1787). All the States except Rhode Island were represented in the Constitu-

Personal
of the
convention tional Convention, which held its sessions at Philadelphia from May 25 to September 17, 1787.

Fifty-five delegates were at one time or another in attendance,¹ including many of the ablest leaders and statesmen of the day. Of these nine had been signers of the Declaration of Independence; while all except twelve had served at some time in Congress, and eighteen were their members. Prominent among the delegates were George Washington, Benjamin Franklin, James Madison, Edmund Randolph, Alexander Hamilton, James Wilson, Gouverneur Morris, William Paterson, Elbridge Gerry, Roger Sherman, Oliver Ellsworth, John Dickinson, Luther Martin, Charles Pinckney, Charles Cotesworth Pinckney, and others of less note, but representing the best talent and thought of the country.

273. Organization. The date of the convention had been originally fixed at May 14, 1787, but it was not until officers and May 25 that delegates from a majority of the procedure States were present. On this date an organization was effected by unanimously choosing George Washington as president, and William Jackson, secretary. It was decided that the convention should sit behind closed doors, and that all of its proceedings should be kept secret. As in the Confederation Congress, each State was to have one vote; and seven States were to constitute a quorum.

274. The Contest over Nationalism. The business of the

¹ In all, sixty-two delegates had been appointed.

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convention commenced on May 29, when Edmund Randolph presented the so-called "Virginia plan" ^{The Virginia plan} drafted by James Madison — the plan of government which was destined to form the basis of the constitution. The fundamental feature of this plan was, that it aimed to create a national government, consisting of legislative, executive, and judicial departments; and this government was to operate directly upon individuals, instead of upon the several States. Representation in both branches of the national legislature was to be proportioned either to the quotas of contributions by each State, or to the number of free inhabitants. The national legislative power was to extend to all matters concerning which the commonwealths separately were incompetent to legislate; that is, where individual State legislation would be inconsistent with the public good. Furthermore, the national legislature was to have the important power of vetoing any State laws contravening the national constitution, or any treaty made by the national government. Thus the Virginia plan contemplated the abandonment of the Articles of Confederation, and the establishment of a vigorous and efficient national government.

Many members, especially the delegates from the smaller commonwealths, were opposed to the establishment of such a government. They wished only to revise ^{New Jersey plan} the Articles of Confederation, leaving the States sovereign as before in most practical concerns. They proposed to give Congress additional powers over commerce and revenue, and to establish a federal executive and a system of national courts; but they desired to reserve to the States all other powers not expressly delegated. The views of these delegates were embodied in resolutions submitted to the convention by William Paterson of New Jersey, and known as the New Jersey plan.¹

¹ Two other plans were presented to the convention — one drawn by Charles Pinckney, the other by Alexander Hamilton.

275. The Great Compromise. In the debates that ensued, the question which aroused earnest and at times bitter discussion was that of representation according to population in both branches of the national legislature. Small commonwealths like Connecticut and New Jersey feared that proportional representation would mean that the national government would be dominated by the large States. On the other hand, delegates from the large commonwealths claimed that population was the only just basis for representation, and that it was unfair for the forty thousand people of Delaware to have the same voice in the national council as the half-million people of Virginia. This dispute marked the most critical period in the proceedings, and for a time it seemed that the convention was on the point of being dissolved. The crisis was finally averted by a compromise introduced by Sherman of Connecticut providing that representation in the lower house should be proportioned to population, and that this branch should have the exclusive right to originate revenue bills; while in the upper house the States were to be equally represented. To this the large States reluctantly agreed, and the first great compromise of the constitution was effected. Assured of an equal voice in the upper house of the legislature, the small States were no longer opposed to the establishment of a strong national government; and from this point on the proceedings were more harmonious.

276. The Three-Fifths Compromise. Another important compromise was over the question of representation in the lower house; here the line of division was between the slaveholding and the non-slaveholding States. A considerable part of the population of the Southern States consisted of slaves, and the delegates from these commonwealths insisted that slaves should be counted in apportioning their quotas of Representatives; while the Northern delegates insisted that if the slaves

were property, they could not be counted as persons. It had already been decided that direct taxes were to be apportioned upon the same basis as Representatives; and this dispute was finally compromised by the adoption of the three-fifths rule,¹ according to which five slaves were to be counted as the equivalent of three white persons for the purpose of apportioning both Representatives and direct taxes. This compromise proved in the outcome a distinct advantage to the South; for direct taxes were levied only five times prior to the Civil War, while during this entire period the South by virtue of its slave population had the benefit of a largely increased representation in Congress.

277. **Navigation Acts and the Slave Trade.** A third compromise also had its basis in the difference between the occupations and domestic institutions of the North and the South. Commerce and shipbuilding were the chief industries of New England; while at the South, agriculture carried on by slave labor was practically the sole occupation. The commercial States desired regulation of commerce by the national government in order that American commerce and shipping might be protected from foreign discrimination; but certain slaveholding States — especially South Carolina — feared that unless a two-thirds vote was required to pass laws relating to commerce, the national government might tax or even entirely prohibit the slave trade. The South also feared that Congress might tax exports, thus laying a heavy burden upon its agriculture staples. The problem was finally solved by vesting in Congress power to regulate commerce by a majority vote, but forbidding the enactment of any law prohibiting the importation of slaves prior to 1808 (although a per capita tax of ten dollars might be levied upon each slave imported).² The taxation of exports by the States or by Congress was absolutely forbidden.

¹ The three-fifths ratio had been suggested by the Confederation Congress four years before. It had proposed that in apportioning the amount to be paid by the respective States, three fifths of the slaves should be counted.

² As part of this arrangement it was agreed that slaves escaping from one State to another should be returned to their owners.

278. Other Compromises and Modifications. Many other adjustments were found necessary in order to settle conflicting views among the delegates, so that it may indeed be said that the constitution is made up of a series of compromises. By one of these the election of the President was entrusted to the electoral college, and by another the presidential term was fixed at four years instead of seven. The resolutions offered by Randolph formed the framework of the constitution; but with these were incorporated six provisions from the New Jersey plan, together with perhaps twenty suggestions emanating from Pinckney.

One modification of the original Virginia plan is especially important, namely, the rejection of the proposal to confer upon the general government the right to negative State laws. In its place was substituted a clause from the New Jersey plan declaring the national constitution, laws, and treaties to be the supreme law of the land, binding upon the judges in every State, "anything in the constitution or laws of any State to the contrary notwithstanding."¹ This provision lessened the danger of a clash between federal and State governments; for the decision in case of a conflict of laws is made a judicial, rather than a political question. Since the federal constitution is the fundamental law of the land, all other laws must conform thereto; and the constitution, like other laws, is enforceable in the courts. The federal judiciary has jurisdiction over all cases arising under the federal constitution, laws, and treaties; and therefore has the final decision on all questions of constitutional interpretation. No other single provision of the constitution has worked more successfully in practice, or received more praise from foreign critics. This clause has made our government essentially one of law, rather than a government of men — thus ending the struggle commenced by the English barons against King John at Runnymede.

¹ *Constitution*, Art. vi, Par. 2.

279. Sources of the Constitution. The federal constitution has been characterized by a great British statesman¹ as "the most wonderful work ever struck off at a given time by the brain and purpose of man"; and for many years the generally accepted theory was, that a great part of our constitution was invented by the convention of 1787. Historical research has since shown that nearly every provision of the federal constitution had its origin in British or colonial precedents. The great achievement of the federal convention was in its skillful adaptation of former political experience to existing conditions. The British constitution, and still more, the colonial charters and State constitutions, furnished precedents of the highest value. By carefully working over the materials of old forms, rejecting that which had been tried and found wanting, moulding together familiar features that had proven valuable, a constitution was framed which is essentially a work of adaptation, enlargement, and emphasis, rather than one of creation. This very fact is the greatest tribute to the far-sighted craftsmen of the federal convention; for if the new instrument of government had not been deeply rooted in the political experience of the race, it would not have outlived the constitutions of so many European states, surviving the political and economic changes of more than a century, and meeting the supreme tests of foreign invasion and of civil

280. Completion of the Convention's Work. On September 8, the provisions of the constitution already agreed upon were sent to a committee of revision. A prominent member of this committee was Gouverneur Morris, to whose pen is due the lucid style and orderly arrangement of the instrument. Four days later the constitution came back for final consideration and revision, and after a few minor changes it was completed

¹ Gladstone, in *North American Review*, cxlvii, p. 185.

September 17, 1787. Several delegates had meanwhile left the convention, and only forty-two of the fifty-five members were present. Of these, thirty-nine signed the constitution, and Washington as president of the convention was authorized to transmit the document to the Congress of the Confederation, with the recommendation that the question of its adoption be submitted to conventions of delegates chosen by the people of the several States. Thereupon the convention adjourned, and the great question of ratification was before the people for decision.

281. Ratification. Immediately upon publication of the new constitution, the contest over ratification commenced.

Opposition In the ranks of the opposition were some of the greatest names of the Revolutionary period. In Virginia the opposition was led by Patrick Henry, who feared that the constitution would lead to the annihilation of the States, and the destruction of the liberties of the people; and he was ably supported by Richard Henry Lee, George Mason, and James Monroe. In New York, the new plan of government was bitterly opposed by George Clinton, then governor of the State, and also by Robert Yates and John Lansing, delegates who had left the Constitutional Convention when the vote was announced committing that body to a new constitution. Among the opponents of the constitution were many who conscientiously believed that its provisions threatened the welfare and even the existence of the States; as well as a considerable number of politicians who feared that their influence would be diminished by the establishment of a new federal government. Also arrayed against the constitution was a considerable class opposed to the establishment of any government with power to protect property, to enforce the discharge of public and private debts, and to prevent further issues of dishonest paper money.

The Federalists, as the supporters of the new constitution styled themselves, included the great majority of the

professional classes, as well as the property-holders, merchants, and conservatives, who welcomed the prospect of a strong national government. In Virginia the prominent supporters of the constitution were James Madison and Edmund Randolph, aided by John Marshall, later the greatest chief justice in our history; and the potent influence of Washington was also exerted in its behalf. In New York the foremost Federalist was Alexander Hamilton, ably seconded by John Jay.

Supporters
of the con-
stitution

The press of the days abounded in publication designed to influence public opinion favorably or otherwise concerning the new constitution. The most noteworthy of these publications consists of a collection of essays which are now published under the title of "The Federalist." These essays, eighty-five in number, were designed especially to gain supporters to the new constitution in the close State of New York. They were written by Madison, Hamilton, and Jay, and published in a New York newspaper under the common signature of "Publius." Even at this day "The Federalist" remains the greatest commentary upon the constitution ever written.

The Delaware convention was the first to accept the new constitution, and its ratification was prompt and unanimous (Dec. 6, 1787). In Pennsylvania the influence of Wilson and Franklin secured ratification by a vote of forty-six to twenty-three. New Jersey, Georgia, and Connecticut followed. Massachusetts, after a sharp struggle, ratified by a vote of one hundred and eighty-seven to one hundred and sixty-eight. Maryland and South Carolina followed, increasing the number of ratifications to eight; so that if one more State could be obtained, the constitution would take effect among the nine thus ratifying. While a protracted contest was being waged in the New York and Virginia conventions, New Hampshire ratified, and the fate of the constitution was no longer in doubt. Virginia next ratified by a plurality of ten. In New York, ratification

Action
of State
conventions

was finally wrested from a hostile convention by the splendid leadership of Hamilton; and by a vote of thirty to twenty-seven, New York accepted the constitution (July, 1788).

The first North Carolina convention by a close vote refused either to ratify or reject the constitution; and this ^{North Caro-} State did not come into the Union until November, ^{Lina and} 1789, after the new government had been some ^{Rhode} months in operation. Rhode Island did not accept the constitution until May, 1790, her ratification being hastened by the fact that Congress in fixing duties upon imports treated this commonwealth as foreign territory.

After nine States had ratified, the Congress of the Confederation adopted a resolution fixing the first Wednesday ^{New gov-} in March as the date of the inauguration of the ^{overnment in} new government. As the first Wednesday was the ^{existence} fourth of March, that date became fixed for the beginning and the end of the presidential and Congressional terms. The city of New York was named as the temporary seat of government. After some delay, owing to the fact that a quorum was not present in either branch, the two houses assembled on April 6, 1789, for the purpose of counting the electoral vote. It was found that Washington was the unanimous choice for President, and John Adams with one half as many electoral votes became Vice-President. On April 30, Washington was inaugurated, and the new government was fully established.

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QUESTIONS AND EXERCISES

1. Discuss the reasons which made a new constitution imperative. (*The Federalist*, nos. XV, XVI, XXI, XXII.)
2. In what respect was it fortunate that the Articles of Confederation could not be readily amended?
3. Discuss the efforts to amend the Articles of Confederation. (Kaye, P. L., *Readings*, pp. 39-44.)
4. Mention an important public service performed by each of the delegates named in Section 272.
5. Which were the "small States" at the time of the Constitutional Convention?
6. Compare the New Jersey plan with the Articles of Confederation. In what respects was the New Jersey plan an improvement? (Madison, *Debates*, pp. 168-167.)
7. Compare the Virginia plan with the federal constitution, noting which features of the Virginia plan were adopted and which ones eliminated. (Madison, *Debates*, pp. 59-64.)
8. Explain how the constitution corrected the chief defects of the government under the Articles of Confederation.
9. Was the compromise on the subject of representation an equitable one?
10. Prepare a report upon the several plans proposed in the convention for electing the President.
11. Point out analogies between our constitution and that of Great Britain; between the federal constitution and the early State constitutions.
12. Discuss the work of the Committee on Detail. (Madison, *Debates*, pp. 449-462.)
13. Prepare a report upon the contest over ratification. (Landon, J. S., *Constitutional History of the United States*, pp. 89-124.)

CHAPTER XX

THE AMENDMENT AND DEVELOPMENT OF THE CONSTITUTION

282. Modification of the Original Constitution. The federal constitution as it exists to-day differs little in form ^{Amendment, from the instrument framed in 1787; but in reality interpretation, and usage} the original constitution has been modified so as to keep pace with the great social and industrial changes of the last century. This modification has been effected in three ways: (1) by amendment, in accordance with the method provided in the instrument itself; (2) by interpretation, that is, the construction placed upon its terms by the three departments of government, especially the judiciary; (3) by the development of a body of political usages and customs,¹ which, although not in conflict with its terms, materially modify its spirit and workings.

283. Process of Constitutional Amendment. Of these three ways of modifying the constitution, that by amendment ^{Proposal and ratification} is the most direct and effective, but also the most difficult of application. Article V of the constitution provides two methods by which amendments may be proposed: first, by a vote of two thirds of each house of Congress;² or second, by a convention called by Congress on application of the legislatures of two thirds of the States. Amendments proposed by either method must be ratified by three fourths of the States. This ratification may be made either by the State legislatures, or by special State conventions, according as Congress proposes the one or the other mode of ratification. Thus far seventeen amendments have been made

¹ Sometimes called the "conventions" of the constitution.

² The President's approval is not necessary to a proposed constitutional amendment.

to the constitution, all of which have been proposed by Congress and ratified by the State legislatures.

284. The Bill of Rights. In the contest over the ratification of the constitution, one of the objections most frequently heard was the lack of a bill of rights guaranteeing the liberties of the individual, as well as ^{Purpose} ~~and scope~~ the rights of the States, against federal oppression. Accordingly, at its first session in 1789, Congress prepared and submitted to the States twelve amendments placing express limitations upon the powers of the federal government. Ten of these were ratified by the requisite number of States, thereby becoming a part of the constitution (1791). Of these amendments, the first eight are designed to guarantee to individuals certain fundamental rights concerning which the constitution itself makes no provision. The ninth and tenth amendments confirm the principle that the government of the United States is one of enumerated powers, those powers not conferred by the constitution being reserved to the States or to the people.

285. The Eleventh Amendment. The eleventh amendment was adopted in 1798, in consequence of the decision of the United States Supreme Court¹ that a State ^{Federal} like an individual was liable to be sued in a federal ^{Jurisdiction} court by a citizen of another State or of a foreign country. The eleventh amendment reversed this construction by providing that the federal judicial power should not be construed to extend to any suit against a State by citizens of another State or foreign country.

286. The Twelfth Amendment. The twelfth amendment introduced a change in the method of electing the President and Vice-President, and was adopted in consequence of the election of 1800. The original ^{Presidential} ~~elections~~ section of the constitution provided that electors were to cast their ballots for two persons without specifying which should be President and which Vice-President. The influ-

¹ *Chisholm v. Georgia*, 2 Dall. 419.

ence of the party system made it necessary to modify this provision, so that the electors could designate explicitly their choice for each office; for otherwise a tie vote might result. Accordingly the twelfth amendment, adopted in 1804, provided that the electors should cast separate ballots for each officer.

287. Amendments since the Civil War. The reconstruction amendments (the thirteenth, fourteenth, and fifteenth) were added to the constitution in consequence of Slavery, citizenship, and suffrage. The Civil War. The thirteenth amendment abolished slavery throughout the United States and all places subject to its jurisdiction. The fourteenth defines citizenship, and seeks to prevent the States from discriminating against certain classes of citizens. The fifteenth declares that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

In 1895 the power of Congress to tax incomes was denied by the Supreme Court. In order that Congress might exercise this power, the sixteenth amendment was Income tax added to the constitution in 1913, authorizing Congress to tax incomes.

The seventeenth amendment changes the method of electing United States Senators. Prior to its adoption, Senators were chosen by the legislatures of their respective Election of Senators States. The seventeenth amendment (1913) provides that they shall be elected directly by the voters.

The eighteenth amendment (adopted in 1919) forbids the manufacture, sale, or transportation of intoxicating Prohibition and liquor within the United States. The nineteenth amendment (1920) gives women the right to vote suffrage on equal terms with men.

288. Constitutional Changes through Interpretation. The constitution has also been modified and expanded through interpretation, especially through the construction placed upon its terms by the United

States Supreme Court. The importance of this tribunal in the development of the federal constitution can hardly be overestimated. "The constitution speaks of the age in which it was written, more than a century ago. The court expounds it in the language of its own age, holding fast to the old words and powers, but expanding them to keep pace with the expansion of our country, our people, our enterprises, industries, and civilization. Great controversies arise over questions and conditions impossible for the framers of the constitution to have anticipated. What would they have thought, if one had asked them whether a State law regulating the transmission or taxation of telegraphic messages would be unconstitutional, because encroaching upon the power of Congress to regulate commerce among the States? Plainly, a constitution made a century ago might well be expected to prove inadequate to the wants of the ever increasing population of the United States. That such is not the case is remarkable evidence of its wisdom, and also of the wisdom of its exposition."¹

289. The Doctrine of Implied Powers. In the interpretation and expansion of the constitution, the doctrine of implied powers has been of the utmost importance.² The Supreme Court has uniformly held that the federal government possesses not only the powers expressly granted in the constitution, but also those which are included within, or necessarily implied from, powers expressly granted. In other words, where it appears that a power has been granted to the federal government, the constitution is to be liberally construed so as to give effect to the grant. This construction is authorized by the constitution itself, which declares that Congress shall have power to make all laws which shall be "necessary and proper" for carrying into execution the powers conferred upon the federal government.²

¹ Landis, J. S., *The Constitutional History and Government of the United States*, p. 273.
² Constitution, Art. I, Sec. 8, Par. 18.

290. Chief Sources of Implied Powers. The doctrine of implied powers has been developed chiefly in connection with three express powers: the taxing and borrowing power, ~~Taxing and borrowing powers~~ the power to regulate foreign and interstate commerce, and the war power. The Supreme Court

has held that under the taxing and borrowing power, Congress may create a system of national banks, issue paper money and make it a legal tender for all debts, and establish a tariff system.

Similarly, the power to regulate commerce has been held to authorize laws regulating the transportation of goods ~~Commercial power~~ and passengers between the States of the Union, or between the United States and foreign countries; restricting or prohibiting immigration; establishing an Interstate Commerce Commission with large powers of control over interstate traffic; and providing for the construction of public works in aid of commerce.

The war power has proven one of the most elastic of constitutional powers. Under this power, territory may be acquired and governed in accordance with the laws of Congress, as in case of the territory ceded at the close of the Mexican and Spanish-American wars.¹ A striking illustration of the scope of the war power was during our great Civil War, when President Lincoln exercised almost despotic powers with the sanction of Congress and the nation; and the same has been true in even greater degree during our present war with Germany.

291. Constitutional Changes through Usage. Our constitution has also been largely developed and modified by ~~Influence of usage~~ usage, that is, by long-continued customs, rules, and political practices, which have sprung up in connection with the constitution. These usages or customs are not laws, since they are not recognized or enforced by the courts; but they have almost the force of law, and often

¹ Territory may also be acquired under the treaty-making power, e.g., the purchase of Louisiana, the Gadsden Purchase, and the purchase of Alaska.

materially modify the spirit and workings of the written constitution.

292. Influence of Usage upon the Executive. One of the most important of these usages or understandings has entirely changed the position of the presidential ^{Presidential} electors. The framers of the constitution intended that the electors should exercise a wise discretion in choosing the chief executive. In the first two presidential elections this intention was realized; but since 1800 it has been clearly understood that the electors shall not exercise independent judgment, but shall merely ratify the choice of the political party to which they belong. No law prevents an elector from voting contrary to the wishes of those who elect him, but such an act would be deemed a most serious breach of public trust. In this way the electoral system as originally planned has been entirely superseded by a usage or understanding requiring electors merely to register the vote of their party.

Another unwritten rule having almost equal weight is that limiting the reeligibility of the President. The constitution places no restriction whatever on his reeligibility. Washington declined a third term, partly on the ground that unlimited reeligibility is not in harmony with republican institutions. The example thus set was followed by Jefferson, and public opinion has indorsed the precedent so strongly that it is now unwritten law that a President may not serve more than two terms.

Reeligibility
of Pres-
ident

The President's power of appointment has likewise been largely modified through certain usages. In the case of important appointments,¹ the President is generally obliged by custom to confer with the Senators and ^{Power of} ^{appointment} Representatives from the State where the appointee lives. In other words, Senators (if of the same political party as the President) claim the right to control the federal patron-

¹ Except cabinet appointments, which are generally confirmed as a matter of course.

age of their respective States. The written constitution vests the appointing power in the President; but the unwritten rule of political practice has transferred a large part of this power to the Senate.

Another important constitutional understanding is that with reference to the President's power of removal. The **Power of removal** constitution makes no provision for removals except through the process of impeachment; and the question early arose whether the consent of the Senate was necessary to the removal of officers appointed with the consent of that body. The First Congress adopted the view that the power of removal belongs to the President alone, and this is now the settled rule upon this subject.

Usage has likewise created the President's cabinet, an institution unknown to the written constitution.¹ Custom **The Cabinet** alone has determined that in addition to their duties as administrative officials, the heads of the various executive departments shall meet with the President as an advisory board, popularly known as the cabinet.

293. Usages affecting Congress. Congress, as well as the federal executive, has been affected by important usages.

The committee system Foremost among these is the committee system of legislation, which prevails in both branches of Congress. The committee system is entirely an outgrowth of custom, with no basis whatever in the written constitution; but it affects profoundly the character and work of the federal lawmaking body.

The great political power of the Speaker of the House of Representatives is likewise due solely to usage. The constitution contemplates merely a presiding officer or moderator, like the President of the Senate; but political practice has decreed that the Speaker, through his control over debate and his position as a party leader, shall

¹ The only reference to this subject is the clause providing that "the President may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices." — *Constitution*, Art. II, Sec. 2, Par. 1.

wield more influence in government than any other man except the President.

An almost unvarying custom has added an additional qualification to those prescribed by the constitution for Representative. This is the unwritten rule requiring residence within the district which he represents, as well as residence within the State. Residence
of Repre-
sentatives

294. Constitutional Modifications through the Party System. The development of the constitution has been profoundly affected by our system of political parties. Although parties have grown up independently of the constitution and are nowhere contemplated by its provisions, it is through the party system that the machinery of government is carried on. Thus through the agency of parties the Presidency has been made a representative institution, the candidates for that office being chosen in party conventions, and voted for by electors who merely register the choice of the voters. The influence of the party system has also contributed largely to the importance of the Speakership; and partisan motives determine the composition of congressional committees, and profoundly affect legislation. Managing committees, local, State, and national, the party convention and the party caucus — in short, all the machinery of the party system — have long been fully established as part of the unwritten constitution. These and other usages form an integral part of our constitutional system; so that it may indeed be said that the written constitution provides only the skeleton of government, which custom and usage have transformed into a living organism.

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QUESTIONS AND EXERCISES

1. Mention some of the principal constitutional amendments which have been proposed but not ratified.
2. What amendments were recently submitted to the States by Congress? By how many States did these amendments have to be ratified in order to become effective?
3. Is the process of amending the federal constitution too difficult? Give your reasons.
4. Contrast the process of amending our constitution with the method of amending the British constitution.
5. Compare the first eight amendments to the federal constitution with the bill of rights in your State constitution.
6. Why impose express limitations upon the federal government if it can exercise only those powers which are expressly granted, or necessarily implied from the grant of express powers?
7. Prepare a report upon the decision in the case of *Chisholm v. Georgia* (Section 285).
8. Give an account of the election of 1800, and explain why the twelfth amendment was necessary.
9. Prepare a report upon the adoption of the thirteenth, fourteenth, and fifteenth amendments.
10. Discuss the modification of the constitution by interpretation. (Bryce, James, *The American Commonwealth*, I, ch. XXIII.)
11. Discuss the development of the constitution by usage. (Bryce, James, *The American Commonwealth* I, ch. XXXIV.)
12. Prepare a report upon the usages or conventions of the British constitution. (Dicey, A. V., *The Law of the Constitution* (1902), ch. XIV.)
13. Suggested readings on constitutional development: Kaye, P. L. *Readings*, pp. 51-73.

CHAPTER XXI

RELATIONS OF FEDERAL AND STATE GOVERNMENTS

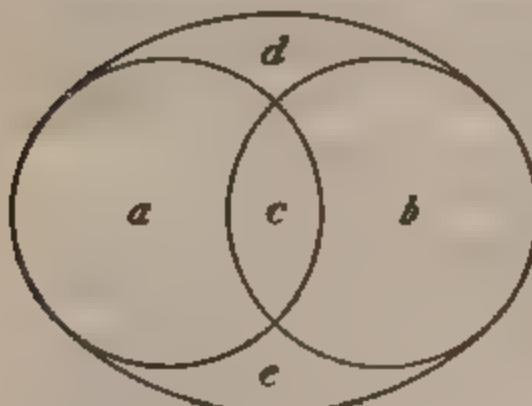
295. The Federal System. The great problem before the Constitutional Convention was not only to create a strong national government, but so to adjust its relations to the existing State governments as to produce a harmonious whole. This was accomplished through the adoption of the federal system under which two distinct governmental authorities exist, the one national, the other State. Each of these agencies is intended to perform that part of the work of government for which it is best adapted, and both rest upon the same ultimate authority — that of the people of the United States. It was John Dickinson who first compared the federal plan to the solar system, pointing out that the national government resembled the sun and the States the planets, each moving in its respective orbit, a deviation from which would imperil the entire system.¹

296. General Distribution of Powers. In the division of powers between the national and State governments, the constitution assigns to the general government those functions which are essentially national in character, while the States are left in control of matters which directly concern their people as communities. Since it would be impossible to name in the federal constitution all the powers of both governmental agencies, only those of the national government are enumerated, all others — except those specifically prohibited — being left to the State governments or reserved to the people.

¹ Madison's Papers, Elliot's Debates (3d ed.), v, 100.

Accordingly the powers of government under our constitution may be grouped into five classes:—

- (a) Those vested exclusively in the national government.
- (b) Those reserved exclusively to the States.
- (c) Those powers (generally called concurrent) which may be exercised by either the national or State governments.
- (d) Powers denied to the national government.
- (e) Powers denied to the State governments.



The ellipse represents the sum total of governmental powers. Circle *a* represents powers delegated to the national government; circle *b*, powers reserved to the States; segment *c*, concurrent powers; segment *d*, powers prohibited to the national government; segment *e*, powers prohibited to the States.—Adapted from Tiedemann, C. G., *The Unwritten Constitution of the United States*.

DISTRIBUTION OF GOVERNMENTAL POWERS

297. Powers of the National Government. To the national government is entrusted control of foreign relations in general, including the making of war and peace; maintenance of an army and navy; regulation of foreign and interstate commerce; control of territories, naturalization, and bankruptcy; of coinage, currency, weights and measures; of post offices, post roads, copyrights and patents; the establishment of federal courts; the punishment of offenses against federal law; the protection of citizens against unlawful or discriminating legislation by any State; and the right to borrow money and to tax for national purposes.

In exercising these powers, the authority of the national government is direct and immediate, operating not through the agency of the States but directly upon individuals. Thus the national government does not call on the States for funds, but levies its own taxes. Nor

does it rely on the States to execute its commands; for the decrees of the national courts are executed by federal marshals, and in case of need the whole military power of the Union may be employed against persons who resist its laws.

298. Classification of Federal Powers. The powers of the national government are sometimes classified as express and implied. Express powers include those expressly enumerated in the constitution; while implied powers are those which by reasonable implication are included in, or result from, those expressly granted. Implied powers have the direct sanction of the constitution, which declares that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the powers vested in the national government.¹

Express and implied powers

299. Interpretation of Federal Powers. Since the national government possesses only those powers expressly or impliedly granted by the federal constitution, it follows that all doubts as to the existence of any power must be settled by reference to the terms of that instrument. In determining what acts are necessary and proper in the exercise of enumerated powers, a liberal interpretation has been applied by the United States Supreme Court, the final arbiter upon constitutional questions. "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."²

Rule of construction
Supremacy of federal law

Although the federal government is one of limited rather than of general powers, yet in the exercise of the powers granted it is supreme, and any conflict between federal and State authority must be settled upon this principle. The language of the constitution

¹ Constitution, Art. I, Sec. 8, Par. 18.

² Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheaton, 816.

is clear and unequivocal in pointing out the supremacy of federal law: "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."¹

In order that the supremacy of the federal government may be maintained without danger of encroachment on the part of the States, the final interpretation as to its powers rests with the federal courts. While State courts may be called upon to construe the federal constitution as a part of the written law, the final decision in such cases is for the Supreme Court of the United States; and the interpretation of this court when rendered becomes a part of the supreme law, binding upon all other courts, and upon all individuals throughout the Union.

300. Powers of State Governments. In contrast with the federal government, the State government is one of general powers. In determining whether a power is rightfully exercised by a State, the question is not whether the power is granted, but rather whether it is withheld. In other words, the States possess all powers of government except those which their own constitutions, or the federal constitution, explicitly or by plain inference withhold. They are the ordinary governments of the country, the federal government being its instrument only for particular purposes.

¹ Article vi, Paragraph 2. In expounding this provision it has been said "If any one proposition could command the universal assent of mankind, we might expect it would be this that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is a government of all, its powers are delegated by all it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control it. The nation, on those subjects on which it can act, must necessarily bind its component parts." Marshall, Chief Justice, in *McCulloch v. Maryland*, 4 Wheaton, 316, 405.

Thus the States have a large field of governmental action, important not only from the variety of subjects included, but also because of the direct relation of these ^{classes} ~~of powers~~ powers to the individual. Practically the entire body of criminal and private law is regulated by the States, including laws against crime, and those regulating the personal and property rights of individuals. The States also have complete charge of local government, of education, and of the elective franchise. They create and regulate corporations, supervise domestic commerce, make legal regulations concerning capital and labor, exercise the far-reaching police power, care for the weak and dependent classes, regulate marriage and divorce, maintain militias, establish systems of courts, borrow money, and levy taxes.

301. Concurrent Powers. Most of the powers granted to Congress are vested exclusively in that body. The power vested in Congress is exclusive if it is made so by ^{Exclusive} ~~powers~~ the express language of the constitution; or if the constitution confers the power upon Congress and prohibits the States from exercising a like authority; or if the subject-matter of the power is national in character, and can be governed only by a uniform system.

In a few cases the powers granted to Congress are not exclusive, but concurrent. In this field the States may pass laws which are valid until Congress sees fit ^{Concurrent} ~~powers~~ to exercise the power with which it is invested, whereupon State laws are suspended, either wholly or so far as they are inconsistent with federal legislation. Thus the States control the subject of weights and measures in the absence of congressional action. Similarly, the States have passed laws on the subject of bankruptcy during those periods of our history when there was no federal bankruptcy act. The States may also provide by law for the punishment of counterfeiting, this being an offense against the State as well as the nation.

302. Prohibitions upon the National Government. The

principal limitations imposed on the federal government are set forth in Article I, Section 9, of the federal constitution, and in the first ten amendments. Most of these restrictions are designed either to protect individual liberty, or else to safeguard the States against discriminating legislation on the part of the federal government.

303. Restrictions designed to protect Individual Liberty. Among the important limitations for the protection of the individual are the following:—

(1) The privilege of the writ of *habeas corpus* may not be suspended unless in case of rebellion or invasion the public safety requires.¹

(2) Congress may not pass a bill of attainder (depriving persons of life or property by legislative act), or enact any *ex post facto* law (making criminal an act which was not an offense when committed).²

(3) Congress may not define treason, since the definition of that word is placed in the constitution itself.³

(4) No laws may be passed establishing or prohibiting any religion, or abridging freedom of speech or of the press, or the right of the people peaceably to assemble and petition the government for a redress of grievances; or infringing upon the right of the people to keep and bear arms.⁴

(5) Soldiers may not be quartered in any house in time of peace without the consent of the owner; and security of the dwelling-house is further assured by prohibiting unreasonable searches and seizures, and restricting the method of issuing search-warrants.⁵

(6) No person may be tried for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury; or be subject for the same offense to be twice put in jeopardy of life or limb; or be compelled in any criminal case to be a witness against himself; or be tried otherwise than by an impartial jury of his State and district, with the right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.⁶

¹ Constitution, Art. I, Sec. 9, Par. 2.

² Ibid., Art. I, Sec. 9, Par. 3.

³ Ibid., Art. III, Sec. 3, Par. 1.

⁴ Ibid., Amendments I and II.

⁵ Ibid., Amendments III and IV.

⁶ Ibid., Amendments V and VI.

(7) Excessive bail may not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.¹

(8) No one may be deprived of life, liberty, or property without due process of law, nor may private property be taken for public use without just compensation.²

(9) The right of trial by jury must be preserved in all common-law actions where the value in controversy exceeds twenty dollars; and no action determined by a jury may be reexamined otherwise than according to the rules of the common law.³

(10) Slavery and involuntary servitude (except as a punishment for crime) is prohibited within the United States, and all places subject to its jurisdiction.⁴

(11) The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.⁵

(12) The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.⁶

304. Other Limitations upon the Federal Government. Most of the remaining limitations are designed to protect the States against discriminating legislation by the federal government. Thus no capitation or other direct tax may be imposed except in proportion to the census.⁷ No duties or taxes may be levied upon exports from any State, nor may any commercial regulation give preference to the ports of one State over those of another.⁸ Further, all import duties and internal revenue taxes must be uniform throughout the United States.⁹

Finally, no title of nobility may be granted by the United States; and no person holding federal office may, without the consent of Congress, accept any present, office, or title from any king, prince, or foreign state.¹⁰

305. Express Prohibitions upon State Governments. Prohibitions imposed upon the States are contained in Article I, Section 10, and in the thirteenth, fourteenth, and fifteenth amendments. Of these limitations the first class is designed to prevent the States from infringing upon the sphere of the national government. Thus no State may:

(1) Enter into any treaty, alliance, or confederation; or, with-

¹ Constitution, Amendment VIII.

² Ibid., Amendment IV.

³ Ibid., Amendment VII.

⁴ Ibid., Amendment XIII.

⁵ Ibid., Amendment IX.

⁶ Ibid., Amendment X.

⁷ Ibid., Art. I, Sec. 9, Par. 4.

⁸ Ibid., Art. I, Sec. 9, Par. 5 and 6.

⁹ Ibid., Art. I, Sec. 8, Par. 1.

¹⁰ Ibid., Art. I, Sec. 9, Par. 8.

out the consent of Congress, enter into any agreement or compact with another State or with a foreign power.

(2) Grant letters of marque or reprisal; or, without the consent of Congress, keep troops or ships of war in time of peace; or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

(3) Coin money, emit bills of credit, or make anything but gold and silver coin a tender in payment of debts.

(4) Without the consent of Congress, lay any duty of tonnage, or lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing inspection laws.

306. Second Class of Express Limitations. A second class of express limitations aims to secure private and individual political rights from encroachment on the part of the States. Thus no State may:

(1) Pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

(2) Grant any title of nobility.

(3) Establish or allow slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted.¹

(4) Make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.²

(5) Deprive any person of life, liberty, or property, without due process of law.³

(6) Deny to any person within its jurisdiction the equal protection of the laws.⁴

(7) Assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave.⁵

(8) Deny or abridge the right of citizens of the United States to vote, on account of race, color, or previous condition of servitude.⁶

307. Implied Limitations upon State Governments. In addition to the foregoing express prohibitions, certain other limitations are implied either from express provisions of the federal constitution, or from the nature of the relation between federal and State governments. Thus in some cases the powers granted to Congress are exclusive, either because so declared in express terms (as the power to exercise exclusive legislation over the seat of government); or because the

¹ Constitution, Amendment xiii.

⁴ *Ibid.*, Amendment xiv.

² *Ibid.*, Amendment xiv.

⁵ *Ibid.*, Amendment xiv.

³ *Ibid.*, Amendment xiv.

⁶ *Ibid.*, Amendment xv.

subject-matter of the power is national in character, demanding a uniform system, and necessarily precluding any form of State action (as the power to establish a uniform system of naturalization).

Similarly, the provisions defining the jurisdiction of the federal courts; securing to the citizens of each State all the privileges and immunities of citizens in the several States; requiring that each State give full faith and credit to the public acts, records, and judicial proceedings of every other State; enjoining interstate extradition; guaranteeing to each State a republican form of government, — all carry with them an implied prohibition of any State legislation which in any way would impair their effectiveness. From the nature of the relation between the States and the federal government, it follows that there is an implied prohibition on the part of the States to place any tax upon the instruments or means selected by the federal government to carry out its powers.

308. Privileges of States in the Union. Foremost among the important privileges belonging to States as members of the federal Union is that of representation in Congress, in which body each State is entitled to two Senators, and a number of Representatives in proportion to its population. Similarly, each State has a right to participate in the election of a President by choosing electors for that purpose.

Another important privilege is the guaranty by the United States to each State of a republican form of government. By republican government is meant one in which those exercising authority act in a representative capacity, the ultimate power of control being vested in the people themselves. Republican government in a State might be threatened through invasion by some foreign power, and an attempt to establish a government under its authority; or by an insurrection having for its object the overthrow of the existing government. In either case it would be the duty of the federal government to interpose, and to protect the people of the State by the employment of the military force of the United States.

Each State has the right of territorial integrity — it cannot be divided without its consent. Finally, the States ^{other} ~~privileges~~ have certain important financial privileges. In the past the United States has on several occasions distributed considerable sums of money among them, as well as public lands of immense value; while at the present time the federal government makes annual appropriations for the support of agricultural stations, and of State agricultural and mechanical colleges.

309. Duties of the States in the Union. The privileges of the States as members of the Union involve corresponding duties. In the first place, the States are under obligation to keep up the forms of the national ^{To help maintain national government} government by choosing presidential electors, electing Senators and Representatives, and fixing the franchise which qualifies persons to vote for members of the House of Representatives.

The second and most important duty of the States is to remain in the Union. Before the Civil War, those who ^{To remain in the Union} championed the doctrine of State sovereignty argued that the States were and had always been sovereign and independent; and that the Union was a voluntary compact from which any State might withdraw if it chose. Upon this issue the Civil War was waged, and the result of that conflict established forever the principle that the Union is not a compact between States, but a permanent government established by the people of the United States, and alterable only through constitutional amendment. In the language of Chief-Judge Chase, "the constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." There can be no such thing as peaceful secession; once a State is in the Union there is "no place for reconsideration, or revocation, except through revolution, or through consent of the States."¹ Hence the ordinances of secession adopted

¹ *Texas v. White*, 7 Wall. 700.

by the Southern States were absolutely null and void, and those States remained legally members of the Union, although the outcome of the Civil War practically reduced them to the position of conquered territory.

Finally, the States have other miscellaneous duties toward the Union, many of which have been already mentioned. They are to maintain a militia over which the federal government has large powers of control; and they are under obligation not to enact legislation in conflict with federal law.

310. Interstate Obligations. In addition to their obligations towards the federal government, the States owe important duties to each other as equal members of the same Union. By a provision of the federal constitution the citizens of each State are "entitled to all the privileges and immunities of citizens in the several States."¹ The purpose of this provision is to promote the unity of the American people by preventing discriminations against citizens of other States. This clause secures to the citizen of one State the right to travel about freely, or to settle or trade within the limits of any other; to acquire and hold property in any commonwealth, and to be exempt from any higher taxes or other burdens than are imposed upon citizens of that State; also to claim the protection of any State government, and to have access to its courts.

Political privileges, as the right to vote, to hold office, and to serve on juries, are of course not shared, these rights being properly reserved by each State for its own political citizens. A State may also limit the right to practice law to its own citizens, as well as the right to share in the use of the common property of the State (for example, to fish in the public waters, or to hunt game within the State limits).

311. Public Acts and Judicial Proceedings. The federal constitution provides that "full faith and credit shall be

¹ Constitution, Art. iv, Sec. 2, Par. 1.

given in each State to the public acts, records, and judicial proceedings of every other State."¹ This does not mean that the laws of any State are binding upon persons outside its limits, but that if it becomes necessary for the courts of New York, for example, to determine what are the public statutes of Pennsylvania, that fact may be established by introducing in evidence the Pennsylvania legislative records. Further, if the case in the New York court is one affected by Pennsylvania laws, that court will endeavor to give those laws the same effect that they would have in the Pennsylvania courts.²

A similar rule prevails with respect to judicial proceedings. A judgment rendered in one State by a court of competent authority having jurisdiction of the parties and subject-matter is conclusive in all other States in an action between the same parties and involving the same issues.

312. Interstate Extradition. Extradition is another interstate obligation imposed by the federal constitution. In order that fugitive criminals may be duly tried and punished, the constitution provides that "a person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."³

The usual procedure when a criminal takes refuge in another State is to have him arrested and held until the governor of the State where the crime was committed sends a requisition to the executive of the State where he is found, asking his return; whereupon he is turned over to the authorities of the State issuing the requisition.

¹ *Constitution, Art. iv, Sec. 1, Par. 1.*

² For example, contracts made in one State, and valid where made, are usually recognized as valid when it is sought to enforce them in another State.

³ *Constitution, Art. iv, Sec. 2, Par. 2.*

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QUESTIONS AND EXERCISES

1. Explain fully how the federal government brings its authority to bear directly upon individuals. Contrast this with the condition under the Articles of Confederation.
2. Prepare a report upon the decision of the Supreme Court in the case of *McCulloch v. Maryland*. (Section 299.)
3. May a State court declare a national law unconstitutional?
4. Explain the reason for giving the national government control of each of the subjects enumerated in Section 207.
5. If the first eight amendments had not been passed, could Congress have exercised these powers? Do these prohibitions apply to the States? (Section 303.)
6. May a State government levy a tax upon United States bonds? Upon the capital invested in national banks?
7. Mention some of the rights of States which cannot be infringed by the federal government.
8. May the President suppress violence or disorder within a State if not requested to intervene? (Section 368.)
9. Enumerate the provisions of the federal constitution which were adopted in order to insure interstate comity.
10. Suggested readings on relations between State and federal governments: Kaye, P. L., *Readings*, pp. 74-94.

CHAPTER XXII

THE SENATE

313. Congress a Two-House Body. The legislative authority granted by the federal constitution is vested in a **Advantages of two houses** Congress consisting of two houses, the Senate and the House of Representatives. In creating a Congress of two branches, the framers of the constitution followed the precedent of Great Britain, as well as that of nearly all the thirteen State assemblies, wherein legislative powers were vested in two separate houses.¹ It was urged that each house would act as a check upon rash and ill-considered legislation on the part of the other, and that two houses would be less likely than a single body to encroach upon executive and judicial authority. The two-house plan thus established now prevails in all of the States of the Union, and is likewise a characteristic feature of the legislative assemblies of all important countries.²

314. Equal Representation of States. As the result of a **The Connecticut Compromise** great historical compromise adopted by the Constitutional Convention to reconcile the conflicting desires of the large and the small States, the commonwealths are equally represented in the Senate, each

¹ Only Pennsylvania and Georgia had legislative assemblies consisting of a single house. Georgia created two houses in 1789, Pennsylvania in 1790. Vermont also had a one-house legislature from 1786 until 1839.

² Great diversity prevails in the numbers, mode of selection, and powers of the upper houses in other countries. The British House of Lords consists of about six hundred hereditary peers. The French Senate numbers three hundred members, chosen by indirect election for a term of nine years, one third being elected every three years. In Switzerland the Council of State consists of forty-four members, two being chosen by each canton in such manner and for such term as the canton may see fit. The German Bundesrat consists of fifty-eight members who represent the princes of twenty-three States and the people of three free cities, in whom the sovereignty of the German Empire resides. The Italian Senate and the Austrian Herrenhaus consist of members appointed by the Crown for life.

In all these countries except Germany, the upper house occupies a subordinate position as compared with the popular branch of the legislature, and seldom ventures to reject measures upon which the lower house is determined.

electing two members; while in the House representation is proportioned to population. Thus the House represents the nation as a whole, the national principle; while the Senate represents the federal idea, equality of States.¹

Under this plan, there are 96 Senators, two from each of the forty-eight States; while the House of Representatives has 435 members. Equal representation of States in the Senate, regardless of population, is sometimes denounced as unjust and undemocratic. *Criticism of equal representation*

Nevada, for example, with a population of 77,407, less than one half as many people as there are in the city of Atlanta, has as much power in the Senate as the great commonwealth of New York with over ten million inhabitants. Less than one fifth of the total population of the United States actually choose a majority of the Senate, while four fifths of the people of the country are represented in that body by a minority of the members. However, this plan was undoubtedly necessary in order to secure the consent of the smaller States to the adoption of the constitution; and in practice, American politics have never turned upon a conflict of interests between the large and the small States. With the object of preventing any departure from the original compromise, the constitution provides that "no State, without its consent, shall be deprived of its equal suffrage in the Senate."²

315. Relations of the Two Houses. The United States is the only great country in the world where the two legislative houses are really equal and coördinate. In Great Britain, France, and Italy, for example, *The parliamentary system* the lower branch of the legislature is practically

¹ However, the members of the Senate vote as individuals and do not cast the vote of the State as such; nor are they subject to instruction or recall by the legislatures that elect them (although State legislatures sometimes pass resolutions purporting to "instruct" their Senators).

² Constitution, Art. V — It is sometimes said that this is the only provision of the constitution which cannot be changed by amendment. This is incorrect, for the sovereignty of the people is unlimited, and they may amend the constitution in this or any other respect, or make a new one omitting the principle of equal representation. Hence this guaranty merely represents the plighted faith of the framers of the constitution to the small States that their equal representation shall not be taken away.

supreme; and in case of conflict, the upper house must ordinarily give way. Moreover, under the parliamentary system which prevails in these countries, the lower or popular branch of the legislature practically controls the administration, which it has virtually installed and which it supports.¹

The con-
gres-
sional
system

But under our congressional system, the two houses possess coordinate and independent authority, and the executive is independent of both. Disputes between the two houses are frequent, as each freely alters and amends the bills that come from the other. In case of disagreement over a measure, the Senate usually, though not invariably, gets the better of the contest. It is a much smaller body, and can more easily keep its majority together. Then too, Senators serve for longer terms than Representatives, and as a rule they have had a wider political experience. Many Senators have previously served in the House, and hence are thoroughly familiar with the inner workings of that body. Although the constitution provides that revenue bills shall originate in the House of Representatives, as a matter of fact the Senate has an equal, and in many cases a far greater power. "As the term of service is longer and the chances for reëlection greater, the Senate usually contains a relatively larger number of political experts, acquainted not only with the problems of law-making, but also with the inner workings of the federal government. The influence of the Senators is also augmented by their position as party leaders within their respective States. They have, as we have seen, a large power in appointing to federal office; and sometimes they are able to construct political machines of extraordinary strength. They usually have great weight in selecting delegates to national party conventions, and in fact they are largely responsible for the predominance of the federal office-holding element in those assemblies. This command over

¹ See Sec. 12, page 9.

party resources within their states enables the Senators to bring more or less pressure on the members of their party in the House of Representatives. When the State organization, in close touch with its Senator or Senators, adopts a policy, it is usually wise for the member of the House of Representatives, if he expects further party favors, to fall in line with the policy.”¹

316. Election of Senators. In accordance with the seventeenth amendment² to the federal constitution, each State is represented by two Senators, elected directly by the voters of the State. Those persons are qualified to vote for Senator who, under State law, may vote for members of the more numerous branch of the State legislature.

If a vacancy occurs in the representation of any State in the Senate, the governor of the State issues a writ of election to fill the vacancy. If the State legislature grants the necessary authority, the governor may appoint some one to serve temporarily as Senator, until the vacancy is filled by popular election.

Prior to the year 1913, Senators were chosen by the legislatures of their respective States. The framers of the constitution believed that better men would be chosen in this way. But there were serious objections to the method of indirect election. It intensified the strife between the national political parties in the field of State politics, for each party put forth extraordinary efforts to secure a majority in the legislature which was to elect a Senator. Hence State interests and policies were subordinated to an issue of national politics. Again, after a long and bitter contest it sometimes happened that no candidate was able to secure a majority, and a “deadlock” occurred; meantime the State was without its proper repre-

¹ Beard, C. A., *American Government and Politics*, pp. 249-250.

² The seventeenth amendment was proposed by the Sixty-second Congress in 1912, and ratified by the necessary number of States in 1913. It does not affect the election or terms of Senators chosen before its adoption.

sentation in the Senate, and the attention of its legislature was so taken up that State interests suffered.¹

As a result of the public demand that Senators be elected by the people, the House of Representatives repeatedly passed a resolution to amend the constitution in this respect; but not until the year 1912 was it possible to secure the necessary two-thirds majority in the Senate. Once proposed, the amendment was promptly ratified by three fourths of the States, and became effective in 1913.

317. The Senatorial Term. The senatorial term is six years, and members are so classified that the terms of one third expire every two years — thus making the Senate a permanent body. It was believed that the six-year tenure would prove long enough to secure the talent and experience necessary for legislation, and to operate as a stable feature in the government. Senators are more frequently reelected than not; the average term of service is about twelve years.

318. Qualifications of Senators. The constitutional qualifications for Senators are three, and relate to age, citizenship, and residence. To be eligible to membership, one must be at least thirty years of age, must have been nine years a citizen of the United States, and must be an inhabitant of the State for which he is chosen.² The States have no power to add to or subtract from these constitutional qualifications; and whether they are lacking in a particular case is a question for the Senate itself to decide.

The constitution expressly creates two disqualifications — the holding of a federal office contemporaneously, and participation in rebellion against the United States, after having taken oath as a government officer to support the constitution.³ Congress or the Senate can make only such further disqualifications as are reasonably im-

¹ For example, in the year 1901, senatorial deadlocks existed in the legislatures of Nebraska, Montana, Oregon, and Delaware, throughout the greater part of the legislative sessions. In Delaware the deadlock continued until adjournment, leaving the State with no representation in the Senate.

² Constitution, Art. I, Sec. 3.

³ Congress may remove the latter disqualification by a two-thirds vote of each house.

plied in the constitutional provisions. Thus the corrupt use of his powers by a legislator has been made a disqualification.

319. Rights and Privileges of Members. Members of Congress have the constitutional right to a compensation for their services, the amount to be determined ^{Compensa-} by statute and paid out of the treasury of the ^{U.S.} United States. At present both Senators and Representatives receive \$7500 per year, to which is added an allowance for clerk hire, stationery, and traveling expenses.

Except in case of treason, felony, or breach of peace, both Senators and Representatives are privileged from arrest during attendance at the sessions of their respective houses, and in going to and returning ^{Freedom from arrest} from the same. The object of this provision is to exempt members from being interfered with by judicial process while in the performance of their official duties.¹

Finally, members of Congress have the important privilege of freedom of speech and debate in their respective houses. That is, only the house itself can call members to account for their utterances in that body; and a congressman cannot be prosecuted in the courts for libel or slander on account of any utterances in the house to which he belongs, or for the official publication of what he says. ^{Freedom of speech and debate}

320. The Senate's Powers in Legislation. With a single exception, the legislative powers of the Senate are identical with those of the House, and bills may originate ^{Revenue} ^{bills} indifferently in either branch. The exception is in case of revenue bills, which must originate in the House, although the Senate may propose or concur with amendments as on other bills.²

¹ The exemption is not of great practical value, since seizure of the person is not ordinarily authorized except in criminal cases, as to which the exemption does not apply. However, this privilege secures exemption from such a process as a subpoena, or a summons to serve on a jury.

² Thus in 1894 the Wilson Tariff Bill, which originated in the House, was transformed in the Senate by the addition of one hundred and forty-three amendments.

321. Executive Functions of the Senate. The Senate is not only a legislative body, but also an executive chamber, having two important executive functions ^{Treaties and Appointments} first, the power of approving treaties; and second that of confirming the most important presidential appointments. At the time of the adoption of the federal constitution, the upper house of the State legislatures had a large degree of control over the governor's power of appointment;¹ and a similar distrust of the executive induced the framers of the constitution to give the Senate control over these two important executive powers.²

322. Power to approve Treaties. All treaties negotiated by the President must be submitted to the Senate for approval, and in order to be ratified must receive the favorable vote of two thirds of the Senators present when the vote is taken. Although the President is not obliged to consult with the Senate during the negotiation of a treaty, in practice he usually does so, especially with the committee on foreign relations. The Senate considers treaties, as well as other executive business, in executive or secret session.³ The treaty may be approved or rejected as a whole; or it may be ratified in part, additional articles being recommended as amendments. When thus changed, the treaty does not become law until both the President and the foreign power have consented to the amendment.

323. Confirmation of Executive Appointments. Through its second executive function, that of confirming nominations submitted by the President, the Senate ^{Senatorial courtesy} exercises considerable control over the civil administration. This provision was designed to prevent abuses of power on the part of the executive, but it has operated

¹ In most of the colonies there was a body known as the governor's council, appointed by the king, whose consent was necessary to the validity of certain executive acts. After the colonies became independent, the governor's council disappeared except in Maine, Massachusetts, and New Hampshire. In most States the control over appointments which it formerly exercised has been transferred to the upper branch of the State legislature.

² For the special power of the Senate to elect a Vice-President, see Section 301.

³ During the first five years of the Senate's history, or until 1794, all its sessions were in secret.

to give the Senate a large control over federal patronage through the practice known as "senatorial courtesy." By this term is meant the mutual support that Senators give to one another, especially in the confirmation of executive appointments. Cabinet appointments are generally confirmed as a matter of course, and diplomatic appointments are seldom rejected; but nominations to federal positions within a State¹ are ordinarily not confirmed unless approved by the Senators from the commonwealth in question, provided they are of the same political party as the President.

In considering appointments, the Senate acts in secret session, but reports of their proceedings commonly become public. In an executive session the galleries are cleared, the doors closed, and the obligation of secrecy is imposed upon every Senator, under penalty of expulsion if he discloses the confidential proceedings. But the obligation does not weigh heavily upon some members, and the newspaper correspondents generally manage to find out what occurs.

The President may convene the Senate in special session to consider treaties or appointments. On forty different occasions in our national history such special sessions have been held.

324. The Senate's Judicial Function. The judicial function of the Senate is to sit as a court of impeachment for the trial of persons formally accused, by the House of Representatives, of treason, bribery, or other high crimes and misdemeanors. Impeachment is not limited to indictable offenses, but includes conduct which the courts of law cannot reach, as intemperance or abuse of official power. The President, Vice-President, and all civil officers of the United States are liable to impeachment; and the term civil officers in-

¹ Especially revenue collectors, postmasters in large cities, customs officers, federal judges, district attorneys, etc.

cludes all federal officers, except military and naval officers (who are tried by courts-martial), and members of Congress (who are subject only to the rules of the house of which they are members).

The House of Representatives has the sole power to prefer charges of impeachment, that is, to present the articles of accusation as the grand jury presents an indictment. The trial then occurs before the Senate, the process resembling that of a trial by jury. The House appoints a committee of members to prosecute the charges before the Senate; the accused is entitled to counsel, and to full opportunity to present his defense; each Senator takes an oath to judge impartially; witnesses are examined; and the Senate then deliberates in secret session while arriving at a decision. In ordinary impeachment trials, the Vice-President or the President *pro tempore* of the Senate presides; but in case of the impeachment of the President, the presiding officer is the chief-justice of the United States Supreme Court.

A two-thirds vote of the Senators present is necessary to a conviction; and in case of conviction, the punishment cannot extend further than removal from office, and disqualification to hold any office under the United States. If the offense leading to impeachment is one punishable by law, the person impeached is liable to trial by the courts, as in case of any one who violates the law. The President has no pardoning power in cases of impeachment.¹

¹ There have been nine cases of impeachment in our history, three of which resulted in conviction. The three men convicted were judges of the United States courts, John Pickering, judge for New Hampshire impeached in 1803 for malfeasance in office, including drunkenness and other offenses; West H. Humphreys, judge for Tennessee, impeached in 1809 for disloyalty and inciting rebellion, and Robert W. Archbold, judge of the Commerce Court, impeached in 1913 for using his office as judge to influence railroad officials to grant him certain favors in connection with coal lands.

The most noted impeachment case in our history was that of President Johnson, impeached in 1868 for violating the Tenure of Office Act, and other offenses; acquitted by the narrow margin of one vote (thirty-five Senators voting guilty, and nineteen not guilty).

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QUESTIONS AND EXERCISES

1. Make an outline showing the points of resemblance between Congress and your State and city legislative departments.
2. Compare the Senate with the British House of Lords.
3. Has the Senate accomplished the special purposes which it was designed to fulfill? (*The Federalist*, nos. LXII-LXVI.)
4. How many Senators were there April 30, 1789? For what terms did these Senators serve?
5. What arguments can you present for and against the equal representation of States in the Senate?
6. Name the Senators from your State. How long have they served? When do their terms expire? To which political party do they belong? What political offices did they hold before being elected to the Senate?
7. Were your Senators nominated by conventions, or by party primaries? Which plan do you consider preferable, and why?
8. Give arguments for and against the popular election of Senators. Why did the framers of the constitution favor indirect election?
9. Explain the exact change in the method of electing Senators brought about by the adoption of the seventeenth amendment.
10. How are the political parties represented in the present Senate? Name several of the most prominent Senators of each party.
11. Compare the term and qualifications of United States Senators with those of your State senators.

12. Make a similar comparison as to rights and privileges.
13. Which of the special powers of the United States Senate is exercised by your State senate?
14. State the advantages and disadvantages of having the Senate participate in appointments; in treaties.
15. State the objections to the practice of "senatorial courtesy."
16. Prepare a list of executive officials appointed by the President subject to confirmation by the Senate.
17. What officials in your congressional district were thus appointed? Was your Senator consulted?
18. Give an account of the controversy between President Garfield and Senators Conkling and Platt over appointments in New York State.
19. Name several treaties which have been ratified by the Senate within the last twenty years. Have any been rejected?
20. What is the smallest number of Senators who at the present time can pass a bill? Confirm an appointment? Ratify a treaty?
21. Is a Senator bound to regard instructions by the legislature of his State?
22. Prepare a report upon the impeachment trial of Andrew Johnson. (Sherman, *Recollections*, I, 419-432; Blaine, *Twenty Years of Congress*, II, 341-384; Cox, *Three Decades of Federal Legislation*, 578-594.)
23. May a Senator be appointed to a federal office which was created during his term as Senator? (*Constitution*, Art. I, Sec. 6, Par. 2.)
24. Suggested readings on the Senate: Reinsch, P. S., *Readings on American Federal Government*, ch. V; Kaye, P. L., *Readings*, pp. 156-168.

CHAPTER XXIII

THE HOUSE OF REPRESENTATIVES

325. Composition of the House. The House of Representatives, often referred to simply as the House, consists of 435 members elected every second year by direct vote in congressional districts of nearly equal population. The number of Representatives to which any State is entitled depends upon its population as ascertained by the federal census, taken every ten years. Since the adoption of the fourteenth amendment (1868), the entire number of individuals in each State (except untaxed Indians) is counted in determining the population entitled to representation.¹

Each of the territories is permitted to send to the House a delegate, who may speak on questions affecting his territory, but may not vote. Thus in the Sixty-seventh Congress (1921–1923), Alaska and Hawaii were represented by delegates, Porto Rico and the Philippines by resident commissioners.

326. The Method of Apportionment. After each decennial census, Congress determines upon the number of Representatives of which the House shall consist. The population of all the States is then divided by this number, the quotient being the ratio of representation; and the population of each State is divided by this

¹ Under the original provision of the constitution, Representatives and direct taxes were apportioned among the States according to population. In enumerating the population, all free persons were to be counted, including also persons bound to service for a term of years and excluding Indians not taxed; and including also three-fifths of all other persons. In other words, five slaves were to be counted as equivalent to three white persons in apportionment and in levying direct taxes. This was the famous three-fifths rule, adopted as a compromise between the Northern and Southern members of the Constitutional Convention.

ratio to ascertain the number of Representatives to which it is entitled. Thus after the thirteenth census had been taken (1910), Congress passed an act fixing the number of Representatives at 435. Dividing the aggregate population of all the States, as ascertained by the thirteenth census, by 435, gave a quotient of 211,877 as the ratio of representation. Then the population of each State was divided by this ratio, the resulting quotients being the number of Representatives of the respective States.

After each decennial census, the number of members has been increased;¹ otherwise some States would have had fewer Representatives than during the previous decade, since population does not increase uniformly in all parts of the country.² Under the present ratio, three commonwealths, Delaware, Nevada, and Wyoming, would be without representation were it not for the constitutional provision that each State shall have at least one Representative. When a new State is admitted, it is at once given representation, its members or member being additional to the number provided for by the preceding apportionment.

327. Districting a State. The boundaries of the congressional districts within each commonwealth are determined by its legislature, subject to the restriction of federal law that the districts shall be as nearly as practicable of equal population, and composed of compact and contiguous territory. In case the apportionment act changes the representation of a State, or if the decennial census shows that its population has increased unequally in various sections, redistricting the State becomes a necessity.

Sometimes States are redistricted for less legitimate reasons. The dominant party in the legislature may en-

¹ With a single exception — under the reapportionment of 1842.

² Although the House is now so large as to be unwieldy, it is smaller than the corresponding body in European countries. In Great Britain the House of Commons consists of 670 members; the German Reichstag has 997 members; the French Chamber of Deputies, 584.

deavor, by a process known as "gerrymandering," so to ar-
range the district ^{Gerryman-}
lines as to secure ^{during}
a party majority in the
greatest possible number of
districts. This is done by
massing the opposition votes
in a few districts certain to be hostile
in any event, and by so arranging the
others as to insure a safe majority in
each for the party in control of the legis-
lature.¹

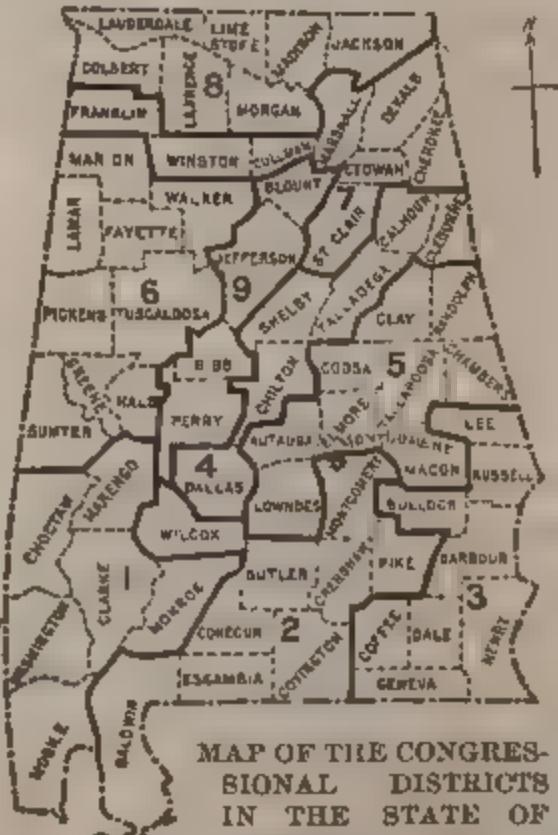
THE ORIGINAL "GERRY-
MANDER":

Federal law requires that the dis-
tricts be composed of
compact and contigu-
ous territory; but it has
been held that territory is contiguous if it touches the
district at any point,
and the result has been
that some States have
created districts of the
most amazing irregular-
ity. The statutory re-
quirement that districts

¹ In 1812, by a carefully planned gerry-
mander, the Democrats in Indiana were
enabled to elect eleven congressmen with
a total vote of 250,000, leaving only two
congressmen to the Republicans, who cast
a vote of 235,000.

² "In 1812 when Elbridge Gerry was gov-
ernor of Massachusetts, the Republican
legislature redistributed the districts in
such wise that the shapes of the towns
forming a single district in Essex County
gave to the district a somewhat dragon-
like contour. This was indicated upon
a map of Massachusetts which Benjamin
Brewster, an ardent Federalist and editor
of the 'Centinel,' hung up over the desk
in his office. The celebrated painter Gil-
bert Stuart, coming into the office one day
and observing the unsightly figure, added
with his pencil a head, wings, and claws,
and exclaimed, 'That will do for a
gerrymander!' Better say a Gerrymander!"
growled the editor, and the outlandish
name, thus duly coined, soon came into
general currency." — Flake's *Civil Gov-
ernment in the United States*.

Evasion of
statutory
restrictions



An example of gerrymandering.

shall be of nearly equal population has also been disregarded. In order to gain a partisan advantage, legislatures have occasionally created districts with almost double the population of other districts in the same State.

328. The Suffrage. When the constitution was framed, no attempt was made to establish a uniform national suffrage; instead it was provided that members of the House of Representatives should be chosen by those persons in the several commonwealths who are qualified to vote for the more numerous (i.e., the lower) branch of the State legislature.

The States are thus given control of the suffrage; and in order to determine who may vote for congressmen in any commonwealth, it is necessary to examine the qualifications prescribed by the State constitution for those who may vote for members of the lower branch of the State legislature. Generally speaking, universal suffrage prevails except as to the criminal, insane, or other defective or delinquent classes. But in a few commonwealths, a property qualification is prescribed, and an educational qualification, as ability to read or write, is required in fourteen States.¹

State control of the suffrage is subject to three important limitations contained in amendments to the federal constitution. The fifteenth amendment was intended to secure the suffrage to negro citizens. Furthermore, section two of the fourteenth amendment provides that in case the right to vote in any State is denied (except for crime) to male citizens who are twenty-one years of age, the State's representation in the House shall be proportionately reduced. Finally, the nineteenth amendment provides that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

¹ Alabama, California, Connecticut, Delaware, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, North Carolina, South Carolina, Virginia, Washington, Wyoming.

329. The Election of Representatives. The constitution confers upon the State legislatures the power to make regulations as to the time, place, and manner of holding elections for Representatives; but reserves to Congress the right to make or alter these regulations at its discretion. For fifty years, in the absence of federal legislation, control of elections was left to the States; and there was considerable diversity in regard to the time and method of electing Representatives. Some commonwealths chose their Representatives on a general ticket (i.e., all voters in the State cast their ballots for the entire number of Representatives allotted to the commonwealth); while other States followed the district plan now in use, each voter casting his ballot for but one Representative.¹

In 1842 Congress exercised its reserved power of regulating the election of Representatives, and passed an act which provided that from that time on, all Representatives should be chosen by districts, and not by general ticket. Other important regulations subsequently adopted by Congress provide that the time for the election of Representatives shall be the Tuesday next following the first Monday in November of the even numbered years;² that the election shall be by written or printed ballot; and that the districts arranged by the State legislatures shall be as nearly as may be of equal population, and composed of compact and contiguous territory.

In a majority of States, candidates for the House of Representatives are nominated by district conventions composed of delegates representing units of local government within the congressional district, such as counties, or in the more thickly settled areas,

Nomina-
tion of
candidates

¹ Under the general ticket plan, the party which carried the State would generally secure all the congressmen, while under the district plan the delegation from a State ordinarily contains representatives of both parties.

² Congress has exempted from the operation of this rule three States whose constitutions contain clauses establishing a different date. Those are Oregon, where the election occurs on the first Monday in June; Vermont, where it takes place on the first Tuesday in September; and Maine, where it is held on the second Monday in September.

assembly districts, townships, or wards. But in a large number of States (including Wisconsin, Nebraska, Oregon, Kansas, and Oklahoma) the older convention method has been superseded by the direct primary system, under which candidates are nominated by the voters at a party primary.

330. The Term of Representatives. Representatives are elected for a term of two years, the legal term commencing on the fourth of March following the election. Actual service does not commence (except in case of special session) until the first Monday in December, thirteen months after the election. Reëlection is frequent, and the average term of service is about five years.

If a vacancy occurs in the representation from any State by reason of death, resignation, or expulsion of a member,

Vacancies the federal constitution authorizes the governor to issue a writ of election to fill the vacancy. A special election is then held in the district where the vacancy occurs, the Representative chosen serving for the remainder of the term.

331. Qualifications for Representatives. The constitutional qualifications prescribed for Representatives relate to age, citizenship, and inhabitancy. A Representative must have attained the age of twenty-five years, must have been a citizen for at least seven years, and must be an inhabitant of the State from which he is chosen.¹ The House itself determines whether these qualifications exist, and has even rejected duly elected individuals who possessed the constitutional qualifications.² The States cannot add to the constitutional qualifications; but universal custom having almost the force of law prescribes residence within the district which the member represents.

332. Rights, Privileges, and Disabilities of Members. The privileges of members of the House are the same as

¹ The constitution also provides that no person holding any office under the United States may be a member of Congress during his continuance in office.

² Thus the Fifty-sixth Congress excluded Brigham H. Roberts of Utah, on the ground that he was living in polygamy in violation of both State and federal law.

those of Senators, and include the right to compensation, the privilege of freedom from arrest (except in cases of treason, felony, or breach of peace), and freedom of speech and debate. Representatives, like Senators, may not hold any civil office under the United States during their congressional term; nor be subsequently appointed to any office which has been created, or the salary of which has been increased, during their term.

333. Special Powers of the House. The House has three special powers not shared by the Senate: the exclusive power to initiate revenue bills; the sole right of impeachment; and the power to elect a President of the United States in case no candidate has a majority of the electoral votes. These exclusive powers are not of great importance, and add little to the prestige of the House.

Three
special
powers

GENERAL REFERENCES

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QUESTIONS AND EXERCISES

1. Prepare a report showing points of similarity and contrast between the House of Representatives and the British House of Commons.
2. How many congressional districts in your State? How do these compare in area and population? Is the division a fair one, or has the gerrymander been employed in the interest of the dominant political party?
3. Prepare a report upon the gerrymander.
4. Who is your Representative? To which political party does he belong? Length of his service in Congress? Previous political experience? When does his term expire?
5. What is the number of your congressional district? What counties does it comprise? Which political party generally carries the district?
6. How are the political parties represented in the present House? Name prominent leaders of each party in the House.
7. Was your Representative nominated by a party convention or by a direct primary? Which is the better method?
8. Compare the special powers of the House of Representatives with the special powers of the lower branch of your State legislature.
9. Why should bills for raising revenue originate in the House of Representatives? What is the practice in the British Parliament?
10. Why was the election of a President entrusted to the House of Representatives, in case of failure of the Electoral College to choose a President? In this event, why is the vote in the House taken by States?
11. What is the smallest number of Representatives who can pass a bill for the first time? Over the President's veto? What number could elect a President, in case the election should go to the House?
12. Is it unfortunate that there is so long an interval between the election of Representatives and the meeting of Congress?
13. What qualifications are required in your State in order to permit one to vote for a United States Representative? Who is authorized to determine these qualifications?
14. Compare the term and qualifications of a United States Representative with those of your State representative.
15. May the State legislatures add to the qualifications imposed by the federal constitution for membership in the House of Representatives? May the House itself impose additional qualifications?
16. Under what circumstances may the House exclude from membership a person who has been duly elected?
17. What are the advantages and disadvantages of our practice of requiring a Representative to reside in the district which elects him?
18. What is the present ratio of representation? What are Congressmen-at-large?
19. Contrast the procedure in the House of Representatives with that in the British House of Commons. (Kaye, P. L., *Readings*, pp. 149-155.)

CHAPTER XXIV

CONGRESSIONAL METHODS

334. Term and Sessions of Congress. The life of each Congress coincides with the legal term for which Representatives are elected; that is, it commences on March 4 of the odd-numbered years, and ends on March 4, two years later. Hence Congresses are numbered according to biennial periods. The First Congress began its legal existence on March 4, 1789, and expired at noon on March 4, 1791; the Second Congress lasted from March 4, 1791, to March 4, 1793, and so on to the Sixty-seventh Congress which extends from March 4, 1921, to March 4, 1923.

The constitution requires Congress to assemble at least once each year, the date of meeting — which Congress may change — being the first Monday in December. Two regular sessions are held: the long session from December of each odd year until Congress adjourns, generally in the following June or July; and the short session, beginning when Congress assembles in December of each even year, and ending at noon on the following fourth of March. Thus Congress is ordinarily in session only about one half of its legal term. Special sessions may be called either by the President or by Congress itself.

Congress fixes the time for adjournment by agreement between the separate houses; but in case of disagreement between them on this point, the President may adjourn them to such time as he thinks proper. During the session of Congress neither house may, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses are sitting.

From April, 1789, to December, 1790, Congress met at New York, then the seat of government; from 1790 until ~~Place of meeting~~ 1800 at Philadelphia; and since 1800 at the national capitol at Washington. The Senate chamber is in the north wing of the capitol building, the hall of the House of Representatives in the south wing. Senators occupy revolving chairs with desks, arranged in concentric rows facing the chair of the presiding officer. In the House, members are seated on benches, as in the British House of Commons. Around all four sides of both chambers are large galleries for visitors.

335. Internal Organization of Congress. The constitution makes each house the sole judge of the elections, ~~Elections, returns, and qualifications of its members. Contested elections are referred to a committee on elections, which considers the evidence in each case, and submits a report.~~ The constitution makes each house the sole judge of the elections, returns, and qualifications of its members. Contested elections are referred to a committee on elections, which considers the evidence in each case, and submits a report. Inasmuch as a majority of the members of the committee on elections are chosen from the dominant party, a contested election is quite likely to be decided on partisan lines. Persons may be excluded from membership if the election has been irregular or corrupt; if improper returns have been made; if the constitutional qualifications are lacking; or for other reasons which in the opinion of the house render individuals unfit to act as members.

Each house of Congress may determine its own rules of procedure, punish members for disorderly behavior, and by a two-thirds vote, expel a member.¹ Acts of violence or abusive language may be punished by a vote of censure; or the offending member may be required to make a public apology to the house. Only grave offenses which show unfitness for the public trust and duty of a member are punished by expulsion.

The constitution requires that "each house shall keep a journal of its proceedings, and from time to time pub-

¹ Constitution, Art. I, Sec. 5, Par. 2.

lish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of ^{Journal} the members of either house shall, at the desire of one fifth of those present, be entered upon the journal."¹ The object of keeping a journal is to secure a permanent record of legislative action, as well as publicity of proceedings. The vote by yeas and nays fixes upon each member responsibility for his vote by making it a matter of public record. Since the roll-call consumes considerable time, it ought not to be required for unimportant motions, as a motion to adjourn; hence the restriction that at least one fifth of the members present must demand the vote by yeas and nays.

An official account of congressional debates and proceedings is published, known as the Congressional Record. This appears daily during the session of Congress, ^{Congres-}
^{nional}
^{Record} and is supposed to be a verbatim report of what is said in each house; but members are allowed to revise their remarks before they are printed, and in the House many of the published speeches are not actually made at all — since members often merely prepare their speeches and obtain "leave to print."

336. The Quorum. A quorum of a legislative body is the number of members who must be present in order to transact business; and the quorum required by the constitution is a majority of each house.² A smaller number than a quorum has power only to adjourn from day to day; but they may compel the attendance of absentees by sending out the sergeant-at-arms with instructions to bring in members wherever found.

An interesting question arises as to whether in counting a quorum members are to be considered present who are actually in the house, but who do not answer to their

¹ Constitution, Art. I, Sec. 5, Par. 3.

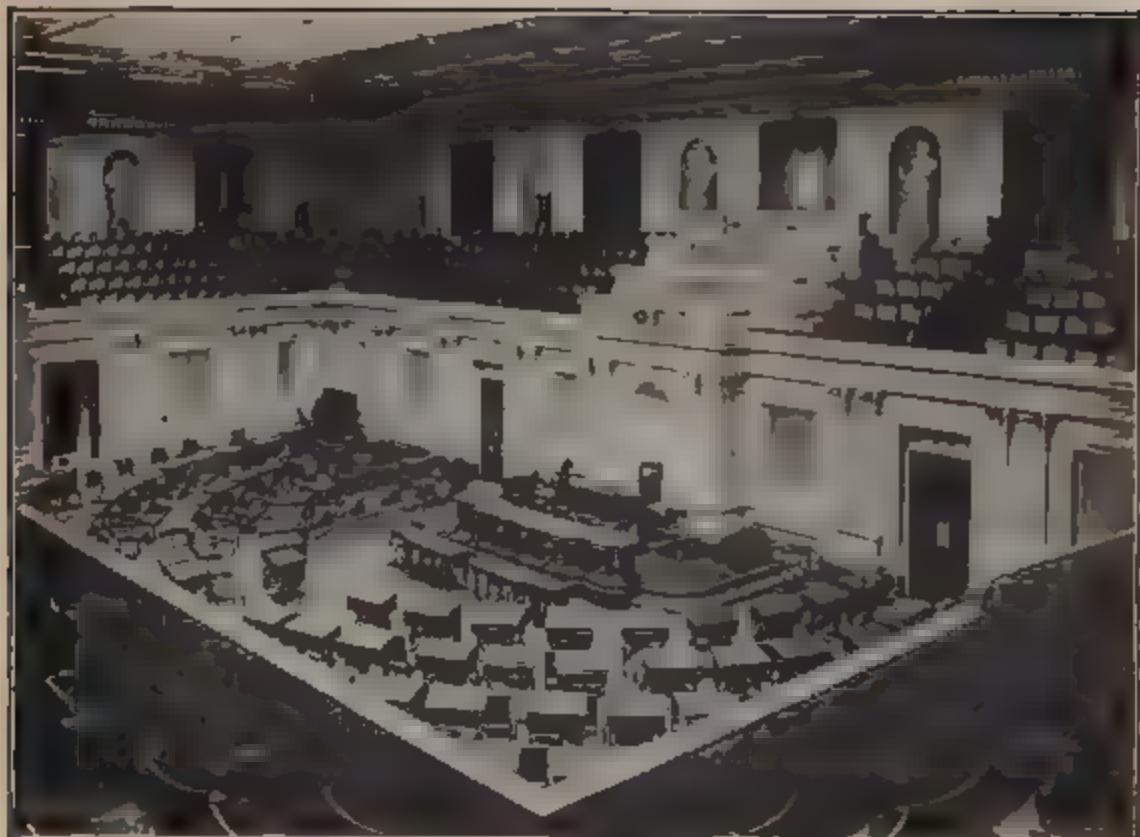
² When the house is once organized, the quorum consists of a majority of those members chosen, sworn, and living, whose membership has not been vacated by resignation or by the action of the house.

names when the roll is called. For many years it was customary for members of the minority party to remain silent at roll-call, so that if several members of the majority party were absent, no quorum would appear. Speaker Reed in 1890 commenced the practice of counting members present whom he saw actually in the House, whether voting or not; and the House afterwards sanctioned his action by adopting the rule that the clerk shall note and record in the journal the names of members present but not voting; and that these names, together with those of members voting, are to be counted and announced in determining the presence of a quorum. This rule constitutes one of the most effectual checks upon "filibustering"—that is, upon obstruction tactics on the part of the minority.

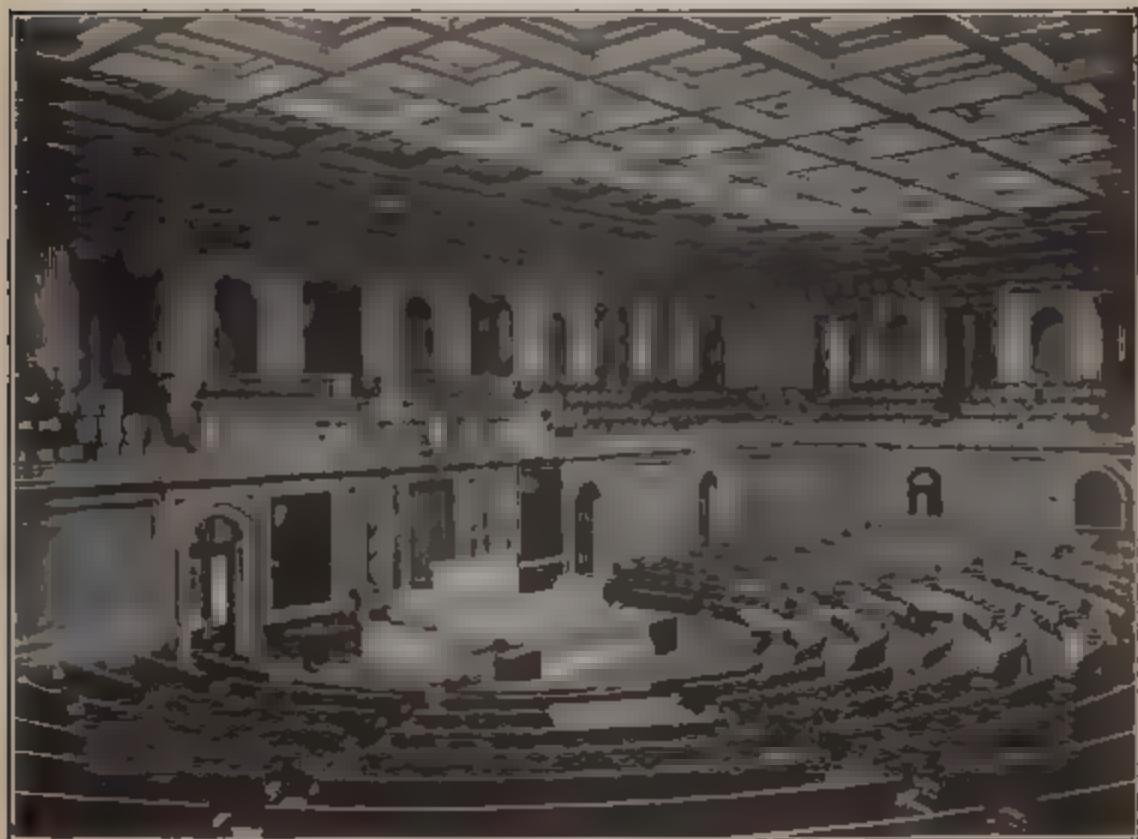
337. The Officers of Congress. The presiding officer of the House of Representatives is the Speaker, chosen from the members by the House itself. In the Senate the *ex officio* presiding officer is the Vice-President of the United States, the Senate itself choosing a president *pro tempore*, who occupies the chair during the absence of the Vice-President, or in case the latter succeeds to the Presidency. Unlike the Speaker of the House, the President of the Senate exercises no special control over legislation, but resembles the Speaker of the British House of Commons in acting simply as a chairman or moderator. Questions of order are decided by him without debate, subject to appeal to the Senate.

Other officers elected by the respective houses from persons not members are: the clerk (in the Senate called the secretary), the sergeant-at-arms, doorkeeper, postmaster, and chaplain. Nominally these officers are chosen by each house; but in practice the choice is made by the caucus of the majority party, held a few days before the organization of the house.

338. The Speaker of the House of Representatives. The



UNITED STATES SENATE CHAMBER



UNITED STATES HALL OF REPRESENTATIVES

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House chooses its Speaker out of its own membership, and in earlier years exciting contests occurred in the House over the election. But with the development of ~~Mode of choice~~ the caucus system the real contest has been transferred to the caucus of the majority party, held shortly before the organization of the House. The candidate chosen by this caucus almost invariably receives the solid vote of his party in the House; for the rule of the caucus is that those who participate in its proceedings must support its decisions.¹

As chairman of the House, the Speaker performs the customary duties of a presiding officer. He opens and closes the sittings of the House; maintains order; decides questions of parliamentary law; acts as the official representative of the House in its collective capacity; authenticates official proceedings by his signature; announces the order of business; states the question; and announces the vote. He also appoints the chairman of the committee of the whole, and may appoint a speaker *pro tem* for a period not exceeding ten days. The Speaker retains his privileges as a member, including the right to take part in debate (in which case he calls some member to the chair); and also the right to vote.

339. Chief Sources of the Speaker's Power. In addition to the above duties, the Speaker has three powers ~~of such importance as to give him a large degree of control over legislation during the period of his speakership.~~ ^{Special powers}

(1) The Speaker is empowered to determine to which committee each bill shall be referred. If the ~~measure might be appropriately referred to either of two committees,~~ ^{Reference of bills} he may determine its fate by sending it to the one which is friendly or hostile, according to his personal inclinations.

¹ The minority party also nominates a candidate in its caucus, who is regarded as the leader of the opposition.

(2) Another source of the Speaker's authority is his power of recognition — that is, of deciding which member is entitled to the floor; for no motion or speech can be made except by one who has been duly recognized by the chair. While there are certain unwritten laws of recognition, and certain restrictions imposed by custom, the Speaker has the power to recognize only such persons as he pleases; and accordingly he may see or refuse to see, as he thinks the public interest requires, or as party interests may dictate. When a member rises and addresses the chair, he is frequently asked, "For what purpose?" and the Speaker then decides whether he shall be recognized. When a bill is before the House for consideration, the Speaker generally has a list of members (arranged beforehand by the committee chairman) who are to be recognized when the proper time comes; and discussion is thus confined to members whose names are on the Speaker's memorandum.

(3) The third source of the Speaker's authority is his right to decide points of order, including power to deal with obstruction — that is, filibustering tactics on the part of the minority. The obstructive devices formerly resorted to by the minority included preventing a quorum by refusing to vote, and delaying action by offering dilatory motions (as to take a recess, or to fix a day to which the House shall adjourn). In the Fifty-first Congress, Speaker Reed inaugurated the existing practice of counting as present persons actually in the House, whether they respond to their names at roll-call or not; and he also disregarded all motions and appeals made simply for the purpose of delay — a practice now invariably followed.

To the imperfect organization of the House, its lack of leadership, and the immense amount of business presented for its consideration, is due the centralization of power in the hands of its Speaker.

With thousands of measures presented for consideration by an unwieldy body of over four hundred members, it is essential to efficient action that some person be vested with large powers of control. Hence the Speaker, representing the political majority, has been entrusted with his large authority.

340. **The Committee on Rules.** The rules committee is virtually a committee of control, with power to decide upon the order for considering bills, to determine the length of debates, and the time when the vote shall be taken. This is done by "reporting a rule" — that is, by presenting a report as to the time and conditions under which the House shall consider a measure — a report which takes precedence over any other business. Accordingly the committee on rules can accept or reject a bill, permit or limit or refuse debate, admit or decline to admit an amendment.

Until 1910 this committee consisted of the Speaker and two majority and two minority members named by himself. In the Sixty-first Congress, those opposed to Speaker Cannon's policy finally succeeded in depriving him of a portion of his powers by a change in the composition of this committee. A resolution was adopted providing that the committee on rules should consist of ten members elected by the House itself, the Speaker being excluded from membership. This number has since been increased to twelve, eight of the majority and four of the minority party.

341. **Congressional Committees.** Large representative assemblies are confronted with the difficult problem of giving careful consideration to an immense number of measures, and at the same time acting promptly and efficiently. Two plans have been evolved for meeting this difficulty. The first is the cabinet or ministerial system, under which the leaders of the majority party in the legislature — who for the time being also hold the

chief positions in the cabinet — prepare legislative measures, and defend them in the assembly against the attacks of the minority party. The cabinet virtually constitutes a central or ruling committee of the legislature, and retains control of the administration so long as it has the support of a majority of the members of the house. When no longer able to command a majority, the cabinet must resign, and a group of leaders from the opposition in turn becomes the governing committee. This is the British system, also followed in many countries of continental Europe.

The second plan is the congressional or committee system, which prevails in our federal and State legislatures.

Congres-
sional or
committees
system Under this system the assembly is divided into a number of smaller groups or committees, each of which is charged with the consideration of legislation pertaining to a certain subject. After being considered by these miniature legislatures, measures are reported to the assembly itself for final action. The decision of a committee with reference to a bill is practically final, for while either house may overrule the committee, in practice this is seldom done. Hence it is said that our legislation is by committees and not by the house, for as a rule the house merely ratifies the decisions of the committees.

Commencing with a few committees in each branch, the number has increased until in the Sixty-seventh Congress, **Develop-**
ment of
committees
system the Senate had 34 and the House 60 committees. In size these vary from 3 to 34 members. Each member of the House serves on one or two committees, each Senator on from five to ten. Prior to 1911, the Speaker appointed all House committees; since that date these committees have been elected nominally by the members of the House, but in practice by the caucus of the majority and minority parties, held shortly before the House is organized.¹ In the same way, the Senate

¹ The members of the party which has a majority in the House meet in a caucus before the House is organized, and select the majority members of the Ways and Means Committee. This committee then acts as a committee on committees to nominate the majority members.

elects its own committees in accordance with the list of members drawn up by the caucus of the two chief political parties. The minority party is given such representation upon committees as the majority sees fit to allow — its representation being sometimes proportioned to the total minority membership.

All of the more important committees have rooms assigned them in or near the capitol, and meetings are held at certain hours on specified mornings. It is in ~~Committee sessions~~ these committee-rooms that most of the real work of legislation is performed. The committees confer with administrative officials, listen to persons interested in proposed measures, summon and examine witnesses, and sift carefully the mass of measures referred to them for consideration.

The advantages of the committee system are: (1) It affords a convenient means of eliminating worthless bills without taking up the time of the House. (2) It ~~enables Congress to dispatch an immense volume of business by subdividing the field of legislation.~~ ^{Advantages of committee system} (3) It promotes specialization of legislative work, since members may be placed on committees for which their previous training has especially fitted them. (4) It enables Congress through its administrative committees to scrutinize the work of the executive departments. (5) It offers a suitable means of coöperation between the executive and legislative departments.

The defects of the committee system have been summarized by Bryce¹ as follows: (1) It destroys the unity of the house as a legislative body. (2) It prevents the capacity of the best members from being brought to bear upon any one piece of legislation, however important. (3) It cramps debate and deprives of all standing committees. The minority members of the House also meet in caucus, and delegate to their floor leader the duty of nominating the minority members on each committee. When the House meets for organization, the committee members, agreed upon by such caucus, are usually elected without debate.

¹ *The American Commonwealth*, I, 159-160.

the country of the light on public affairs which debates in Congress ought to supply. (4) It lessens the cohesion and harmony of legislation, since laws proposed by fifty different groups without any common oversight or control are almost certain to be inconsistent and contradictory. (5) It gives facilities for the exercise of underhanded and even corrupt influence. (6) It reduces responsibility. (7) It lowers the interest of the nation in the proceedings of Congress. (8) It throws power unaccompanied by adequate responsibility into the hands of the chairmen of committees, especially those dealing with finance and other great material interests.

342. The Process of Legislation. Every bill introduced in the House or Senate is read the first time by title only, ^{Introduction} and then referred by the presiding officer to the ^{and refer-} proper committee. The fate of the bill then rests ^{ence of bills} with the committee; and "not having been discussed, much less affirmed in principle by the House, a bill comes before its committee with no presumption in its favor, but rather as a shivering ghost stands before Minos in the nether world."¹ The committee may amend the bill as it pleases; or if unfavorable to the measure, may report it adversely, or too late for legislative action, or fail to report it at all. If a bill receives the approval of the committee, it is reported back to the House or Senate with a recommendation that it be passed. It is then read a second time in full, and is placed upon the calendar — "the cemetery of legislative hopes" — along with hundreds of other bills. Here it must ordinarily await its turn, unless the committee on rules sees fit to direct immediate consideration. If a bill reaches the third reading, it is read by title only unless a reading in full is demanded, and the question is then put whether the bill shall pass.

In the House, debate is limited in several ways: (1) No member may occupy more than one hour in debate on any

¹ Bryce, James. *The American Commonwealth*, I, 157.

question, except the member in charge of the bill, who may have an additional hour at the close. (2) In ~~Debate in~~ the committee of the whole, speeches are limited ~~the House~~ to five minutes on each question. (3) No member except the one who has introduced the bill may speak more than once on the subject without special permission from the House. (4) Before the debate begins, the chairman of the committee in charge of the bill, in consultation with the Speaker, arranges a list of members who are to be heard for and against the measure; and no others will be recognized by the Speaker — control of debate being thus placed in the hands of the Speaker and his lieutenants, the committee chairmen. (5) It is customary for the member in charge of the bill, after a limited discussion, to move the previous question, a motion which cuts off debate and brings the House to a direct vote upon the question.

In the Senate, debate is unlimited, and the absence of a closure rule makes it possible for Senators to defeat a measure by talking indefinitely upon the sub- ~~Debate in~~ ~~the Senate~~ ject. Although this privilege of unlimited discussion is sometimes abused, the Senate has repeatedly refused to adopt a rule cutting off debate. It proceeds upon the theory that if hasty and ill-considered legislation is to be prevented, entire freedom of discussion must be allowed.

Votes in Congress are taken in one of four ways: (1) By *viva voce* vote, in which case the presiding officer calls in turn for the "ayes and noes," and decides by the ~~Methods~~ ~~of voting~~ volume of sound whether the motion has been carried or lost. (2) By a standing vote, whereupon those for and against the motion rise in succession and are counted by tellers. (3) By passing between tellers in front of the Speaker's desk. (4) By roll-call, or vote by yeas and nays. In this case the clerk calls the roll and each member as his name is reached answers "aye" or "no," the vote being then recorded in the journal.

If a bill receives a majority vote in one house, it is engrossed and submitted to the other, where the same process is repeated. Either house may amend any measure proposed by the other; but in case of amendment, however trivial, the bill must be returned to the house in which it originated. In the event of failure to agree upon an important measure, it is customary for each branch to appoint members of a conference committee which endeavors to adjust the differences. The report of this committee is generally a compromise between the opposing views. If the conference report is passed by both branches, an enrolled copy is prepared and signed by each presiding officer; and the bill is then ready to be submitted to the President.

343. Relations of Congress to the President. If the President approves the measure and affixes his signature, it thereupon becomes law. Otherwise he may veto the act, that is, return it to the house in which it originated, with a written statement of his objections. The objections are entered at large upon the journal of the house, whereupon the measure cannot become law unless upon reconsideration it receives a two-thirds vote of each house.

In addition to the exercise of his veto power, the President may influence the action of Congress in the following ways: (1) by his annual message to Congress; (2) by calling a special session of Congress and urging certain legislative measures; (3) by contact and communication through the executive departments with the congressional committees and their chairmen; (4) by the distribution of executive patronage.

On the other hand, Congress may bring its influence to bear upon the President in several ways: (1) By resolution, calling upon the President or an executive department to adopt a certain course, or censuring a course already taken, or requesting

the submission to Congress of papers and information upon which the executive department has based its action. (2) By an investigating committee, appointed to inquire into the management of an executive department. (3) By refusing legislation recommended by the President, in order to embarrass his administration. (4) By withholding an appropriation necessary to carry out an executive policy. (5) By the use of a rider¹ to an appropriation bill. (6) By passing measures restricting the scope of executive powers; for example, requiring the President or his secretaries to do or refrain from doing something formerly left to their discretion. (7) By impeachment, "the heaviest piece of artillery in the congressional arsenal."

344. Limitations on the Legislative Powers of Congress. Since the government of the United States is one of delegated powers, it follows that the legislative authority of Congress is derived from the federal constitution and restricted by its terms. The power to legislate must be granted by the constitution either in express terms or by necessary implication; or the power must be one which is necessary and proper to carry into effect powers therein granted.

Further, an act of Congress must not violate any of the restrictions expressly imposed upon Congress by the federal constitution. These are found mainly in the first ten amendments, and also in Section 9 of Article I. The first ten amendments constitute a federal bill of rights, designed to secure personal and political rights (freedom of speech, trial by jury, and the like) from invasion on the part of the federal government. The principal legislative powers withheld from Congress by Section 9 of Article I. are as follows: —

No bill of attainder or *ex post facto* law shall be passed.

No capitation or other direct tax shall be laid, unless in pro-

¹ "A 'rider' is an unrelated piece of legislation attached to another legislative measure with the purpose of having it ride through on the merits of the measure to which it is attached." — Woodburn, J. A., *The American Republic and its Government*, p. 307.

portion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States.

345. Classification of Congressional Powers. The powers granted to Congress by the federal constitution may be classified under two heads: (1) express powers, or those specifically enumerated in the constitution; (2) implied powers, or those which are incident to express powers and necessary to their execution.

346. Express Powers of Congress. The powers expressly granted to Congress are enumerated in Section 8 of Article I, and in Section 3 of Article IV, and are as follows:—

- (1) To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States.
- (2) To borrow money on the credit of the United States.
- (3) To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.
- (4) To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.
- (5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.
- (6) To provide for the punishment of counterfeiting the securities and current coin of the United States.
- (7) To establish post offices and post roads.
- (8) To promote the progress of science and useful arts by granting copyrights and patents.
- (9) To constitute tribunals inferior to the Supreme Court.
- (10) To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

- (11) To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.
- (12) To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.
- (13) To provide and maintain a navy.
- (14) To make rules for the government and regulation of the land and naval forces.
- (15) To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.
- (16) To provide for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States.
- (17) To exercise exclusive legislative authority over the District of Columbia — the seat of government of the United States; and to exercise similar authority over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other public buildings.
- (18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.
- (19) To dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States.
- (20) To admit new States into the Union.

347. Implied Powers. We have seen that Congress is expressly authorized to make all laws "necessary and proper" for carrying out the powers granted by the federal constitution. This clause is the foundation of the doctrine of implied powers. While the federal government is one of enumerated powers, it is not limited to powers expressly granted by the constitution, but may exercise others which are properly incident to express powers, and necessary to their execution.¹

It would be impossible to enumerate all the classes of statutes enacted by Congress in the exercise of its implied powers, but a few illustrations will show the practical working of the principle. For example, "the money powers of the federal legislature are held to give it

¹ For Chief-Judge Marshall's statement of the doctrine of implied powers, see Section 300.

the right to issue bonds and establish a system of national banks. Its power to regulate commerce invests it with authority to improve rivers and harbors, to maintain a coast survey, life-saving stations, and a naval observatory, to regulate the liabilities of ocean carriers and the charges of railroads, and to protect commerce against unlawful restraints and monopolies, and illegal combinations and trusts. Its power to lay and collect taxes furnishes the authority for the establishment and maintenance of the whole elaborate system for the collection of the customs duties, and internal revenue. Its authority to establish post offices and post roads includes the power to secure the passage of the mails from all obstructions or interruptions, to punish offenses against the postal laws, to exclude lottery advertisements and indecent matter from the mails, and to grant to telegraph companies a right of way over the public domain. Wherever Congress advances to fill the sphere of legislative jurisdiction confided to it by the great grants of the constitution, there advances with it the right and power to choose the means by which its laws shall be made effectual, and which are appropriate to the ends it is designed to accomplish."¹

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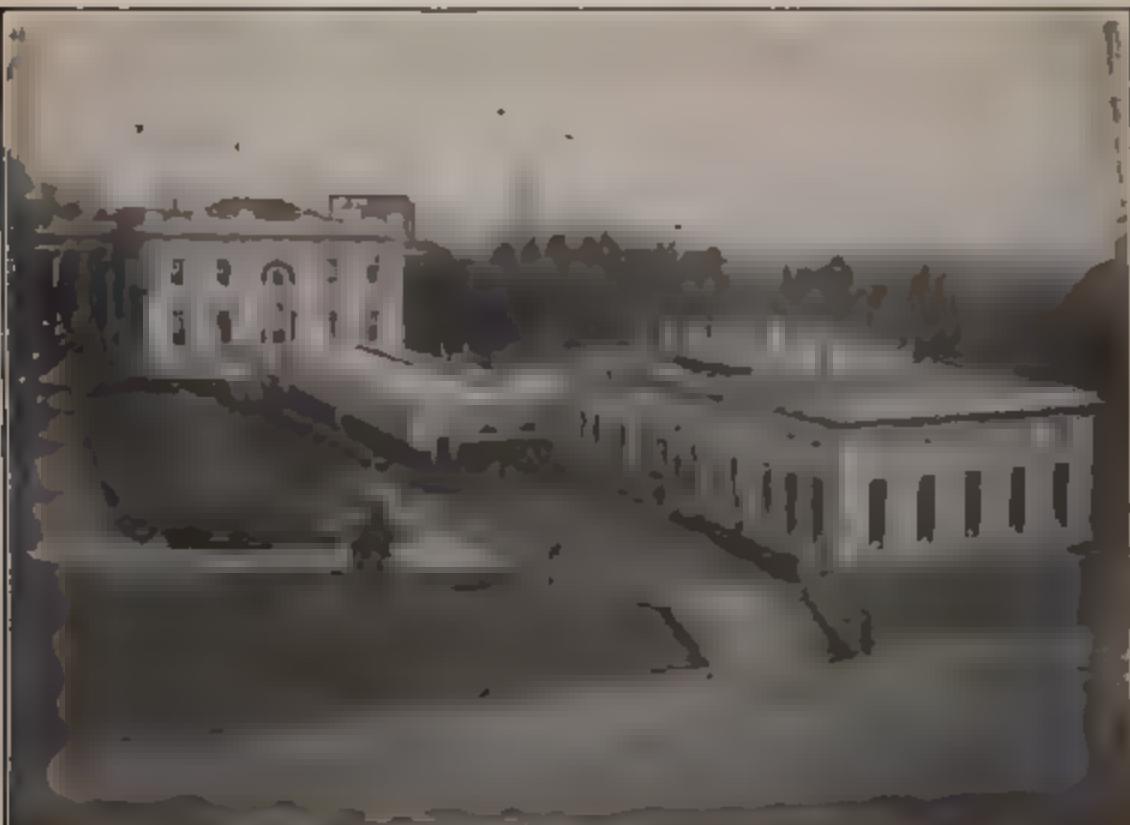
¹ Black, H. C., *Constitutional Law*, p. 237.



(By courtesy of the Superintendent of the United States War and Grounds)

THE OFFICE BUILDING OF THE UNITED STATES SENATE

There is a similar building for the House of Representatives



(By courtesy of Foster and Reynolds, New York)

THE EXECUTIVE OFFICES

Connected with the White House by a portico.

1, R 454

Sixty-first Congress of the United States of America:
At the First Session.

Begin and build on the [next slide](#).

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✓ Stewart

142

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THE FORM OF A FEDERAL LAW

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QUESTIONS AND EXERCISES

1. What is the number of the present Congress? When does its term begin and end? When is the long session? The short session?
2. Give historical examples of important special sessions of Congress. What do you understand by the legislative calendar? The Congressional Record?
3. Which political party has control in each house? What majority has the dominant party?
4. Under our constitution each house has authority to decide questions concerning the election and qualifications of its members, while in the House of Commons disputed elections are referred to a judicial tribunal. Point out the advantages of each method.
5. To what extent may the federal government regulate elections to Congress?
6. Discuss the position and powers of the Speaker of the House of Representatives, especially his powers (a) of recognition, (b) of deciding points of order, and (c) of referring bills to committees.
7. Contrast the position of the Speaker of the House with that of the President of the Senate.
8. Who is the Speaker of the present House? From what State does he come? Are Speakers frequently reelected? What Speaker served longest in this position?
9. Write an account of the struggle in the Sixty-first Congress to limit the powers of the Speaker.
10. Summarize the advantages and defects of the committee system of legislation.
11. Name the most important committees of each branch of Congress, and their chairmen. (See the latest Congressional Directory.)
12. On which committees is your Representative? Committee positions of your Senators?
13. What is meant by the committee of the whole? Describe the procedure in this committee.
14. Answer the same for conference committees.
15. Were any important measures referred to conference committees at the last session? Were any vetoed by the President?
16. Select a law which was passed at the last session of Congress, and learn when it was first introduced as a bill, to what committee it was referred, when it was reported, how long debated and by whom, and the final vote upon it in the house where introduced. Follow it through the other house in the same way, and state when it was signed by the President.

17. What volumes would you examine in order to ascertain the law of Congress upon any subject?
18. Can a bill be carried through all its stages and become a law, all in one day?
19. When does an act of Congress take effect? How are federal statutes promulgated?
20. Contrast the rules of the Senate and House concerning debate.
21. Prepare a report upon the implied powers of Congress.
22. Give instances of laws passed by Congress in the exercise of each of the following: financial powers; commercial powers; military powers; territorial powers; power to define and punish crimes; power to regulate the election of the presidential electors, Senators, and Representatives.
23. Prepare an outline showing (a) the principal subjects of federal legislation; (b) of State legislation; (c) of local legislation.
24. May a Congress bind a succeeding Congress?
25. May the President submit drafts of bills to Congress?
26. What do you understand by each of the following terms: the lobby; filibustering; log-rolling; party caucuses; strike bills; riders?
27. Describe the obstruction methods sometimes resorted to in Congress. Mention recent cases of filibustering in the Senate or House.

Murphy

CHAPTER XXV

ORGANIZATION OF THE FEDERAL EXECUTIVE

348. Method of electing the President. Under the Articles of Confederation, there was no national executive, and this had proven one of the fatal defects of ^{Debates in Constitutional Convention} the Confederation government.¹ Hence in the Constitutional Convention of 1787, there was ~~unanimity~~ unanimity as to the need of an executive department. The method of election was the subject of prolonged debate, the proposed plans including election by direct vote of the people, by Congress, and by electors chosen in various ways.

Shortly before adjournment, the Convention decided that the choice of a President should be entrusted to electors chosen in such manner as the State legislatures direct.² The arguments in favor of this method were that it would obviate the objections to both popular ^{Chosen by Electoral College} and congressional elections; and that it would entrust the selection to men qualified to exercise a wise choice, and capable of acting independently and deliberately. This expectation of an independent choice has not been realized in practice, since the electors in casting their votes do not exercise discretion, but merely register the will of their party as expressed through its nominating convention. In spite of its serious defects, this method of indirect election has at least two advantages: (1) no President can be chosen who does not have supporters in about half the States, thus decreasing the danger of a sectional choice;

¹ The presiding officer of Congress acted simply as a chairman, and was in no sense the executive head of the government.

² The origin of this plan is perhaps to be found in the provision of the Maryland constitution of 1776, under which State senators were chosen by electors who were themselves chosen by the people.

and (2) it lessens the temptation to perpetrate election frauds in States which have large pluralities in favor of one of the political parties.¹

349. Number and Choice of Electors. Each State has a number of presidential electors equal to the aggregate **Number of electors** number of Senators and Representatives to which it is entitled in Congress. Thus New York having thirty-three Representatives and two Senators is entitled to forty-five electors; while Nevada with one Representative and two Senators has three electors.²

The manner of choosing electors is left to the State legislatures, which have tried three different methods. **Methods of choice** election by the legislature itself; popular election by single districts; and popular election by general ticket.

At first in a majority of commonwealths, electors were chosen by the State legislatures; but with the **Election by legislature** growth of democratic ideas this plan was gradually abandoned in favor of popular election, which now prevails in every State.³

Two different methods of popular election have been tried — the district and the general ticket systems. Under **Election by popular vote** the district plan formerly used, each voter cast his ballot for three electors — one for the district in which he lived and two for the State at large. Election by districts was gradually supplanted by the general ticket system, under which each voter casts his ballot for all the electors to which the State is entitled.⁴ Under

¹ Thus if the President had been chosen by direct popular vote in the year 1908, there would have been a temptation to increase, by fraudulent manipulation, the Republican plurality of 129,537 in Pennsylvania, or the Democratic plurality of 151,135 in Texas; but no amount of manipulation could give the Republicans more than thirty-four electoral votes in Pennsylvania, or the Democrats more than eighteen electoral votes in Texas.

² The total number of presidential electors is therefore equal to the entire number of Representatives plus the total number of Senators.

³ By 1832 the only State retaining election by the legislature was South Carolina, which adhered to this plan until 1868.

⁴ Maryland was the last State to give up the district system, which she abandoned after the election of 1832. Since then the district plan has not been used in any State except for two years in Michigan. In 1891 the party then dominant in the Michigan legislature, realizing that it could not carry the electoral vote of the State as a whole, adopted the district system in order to gain the electoral votes of some districts. The plan was successful in dividing Michigan's electoral vote in 1892, but the act was repealed the following year.

the general ticket plan (now universal throughout the Union), the ticket of one party is usually carried entire, since its supporters ordinarily vote for all the electors, whose sole function is to vote for the party's presidential candidate. This method concentrates the struggle in the doubtful States, especially in those which have large electoral votes.¹

350. Qualifications for Electors and Voters. The only constitutional qualification for electors is the negative one that they shall not hold any office of trust or profit under the United States. In practice the district electors must be residents of their respective districts.

The qualifications for voters in presidential elections are the same as those for voters for the more numerous branch of the State legislature. Generally the suffrage is bestowed upon all citizens twenty-one years of age who have resided within the State a certain period — frequently one year.

351. Time of Choosing Electors. Congress is empowered by the constitution to appoint a day for choosing the electors, and this day is to be uniform throughout the United States. In 1845 Congress prescribed the Tuesday following the first Monday in November of each leap year.² The election held on this day is popularly called the presidential election, as it is in effect; but speaking strictly, no votes at all are given for President and Vice-President on that day, but only for certain electors. About two months later the electors who have been chosen meet, and by their votes elect the nominee of their party.

352. Meeting of the Electoral College. In each State the electors who have received a plurality of the popular vote assemble at the State capital on the second Monday in January following their election. Here they proceed to vote in distinct ballots for Pre-

¹ In 1884, Grover Cleveland secured all of New York's thirty-six electoral votes, although his plurality was only about one thousand out of a total of over one million votes cast in that State.

² Also in 1860, which was not a leap year.

sident and Vice-President, one of whom at least must not be an inhabitant of their own State. Three duplicate lists are then made giving the names of all persons voted for as President and Vice-President, respectively, and the number of votes for each. To each of these lists is attached a copy of the certificate of election signed by the governor of the State. The lists are then signed by all the electors, sealed, and certified as containing all the votes of the State for President and Vice-President. A special messenger — generally one of the electors — takes one of these lists to the President of the Senate at Washington; another list is sent by mail to the same officer; and the third is deposited with the United States district judge of the district in which the electors meet.

353. Counting the Electoral Vote. In accordance with the statute passed in 1887, the count of the electoral vote *Process* occurs on the second Wednesday in February following the meeting of the electors. Both houses of Congress assemble in the hall of the House of Representatives, whereupon the President of the Senate opens the certificates, and the count is begun. The vote of a majority of all the electors appointed is necessary to the choice of both President and Vice-President. Except in case of disputed returns, the count is a mere form, since the result is ordinarily known three months before.

354. The Disputed Election of 1876. The constitution simply provides that "the votes shall then be counted,"¹ *Double returns* apparently contemplating a mere enumeration. No method is established for deciding as to the admissibility of doubtful votes, and this omission led to serious difficulty in the disputed election of 1876. At the time of this election there were 369 electoral votes, the number necessary to a choice being 185. Tilden and Hendricks, the Democratic nominees, received 184 undisputed votes; while Hayes and Wheeler, the Republican candi-

¹ *Constitution, Amendment xii.*

dates, received 163 votes which were not contested. Four commonwealths, Oregon, Florida, Louisiana, and South Carolina, with an aggregate of 22 electoral votes, sent in double sets of returns, both the Democratic and Republican electors claiming to have been chosen.¹ As the Senate was Republican and the House of Representatives Democratic, it was evident that Congress would not readily agree upon a solution of the questions involved.

After bitter and protracted discussion, a measure was passed, creating an electoral commission to consist of fifteen members, including an equal number of ^{The} Senators, Representatives, and Justices of the ^{Electoral} Supreme Court. Disputed returns were to be referred to this commission, and its decisions were to be final unless reversed by vote of both houses. The commission voted on strictly partisan lines, and by a vote of eight to seven decided that the twenty-two electoral votes in dispute should be counted for the Republican candidates, who were thereby elected by a vote of 185 to 184. In order to prevent another complication of this kind, Congress passed the act of 1887, regulating in detail the counting of the electoral vote.²

355. **Election by the House of Representatives.** The constitution requires for the election of President "a majority of the whole number of electors appointed." If no person has a majority, the House of Representatives, in accordance with the twelfth amendment, elects the President by ballot from among the three candidates having the highest number of electoral votes. The vote in the House

¹ In Oregon one electoral vote, only, was in dispute.

² If but one return is received from any State, its vote cannot be rejected if regularly given by electors whose appointment has been duly certified by the governor. In case more than one return is received, if there has been a determination by a State authority or tribunal as to who are the legal electors, such determination is conclusive; if conflicting decisions are made by different tribunals, each claiming power to act, the vote of the State is rejected unless the two houses of Congress agree as to who are the legal electors. In case no such determination has been made by State authority, and one set of electors has been certified by the governor, the vote given by them is to be received unless both houses, acting separately, agree to reject; while if neither set of electors has a certificate, the vote is not to be counted unless both houses, acting separately, agree as to who are the legal electors.

is taken by States, the delegation from each commonwealth having one vote; and a majority of all the States is necessary for a choice.¹ In case the House does not choose a President before the fourth of March, the newly elected Vice-President becomes President.

356. Elections of 1800 and of 1824. Two elections, those of 1800 and of 1824, have been decided by the House. In ^{Election of 1800} the election of 1800 both Jefferson and Burr received the same number of electoral votes, 73. This was a majority of the whole number of votes (138), but the tie resulted from the fact that under the original provision of the constitution the electors voted simply for two candidates, without designating separately their choice for President and Vice-President. After an exciting contest, Jefferson was elected on the thirty-sixth ballot. This contest led to the adoption of the twelfth amendment, which establishes the present method of election.

Again in 1824 the House was called upon to decide the contest. Of the electoral votes, Andrew Jackson had received ^{Election of 1824} 99, John Quincy Adams, 84, W. H. Crawford, 41, and Henry Clay, 37. No one having the necessary majority (131), the House proceeded to elect from the three highest candidates. On the first ballot Adams was chosen by the following vote: Adams, 13, Jackson, 7, Crawford, 4.

357. Changes in the Process of Election. Four elections were held under the original provision of the constitution, but the election of 1800 demonstrated the need of a separate ballot for President and Vice-President in order to remove the possibility that the candidate for Vice-President might defeat the candidate intended for President. Accordingly the twelfth amendment was proposed by Congress in December, 1803, and ratified by the legislatures of three fourths of the States in the following year. The principal points of difference

¹ In case of election by the House, members must be present from two thirds of the States.

between the original and the present methods are, that the electors now cast separate ballots for President and for Vice-President; and that when the election devolves upon the House, that body chooses from the three highest candidates, instead of from the five highest, as under the original clause.

The intention of the framers of the constitution was that the electors should act independently in selecting a President. But in the third election (1796), it ^{By political practice} was understood that the Federalist electors were to vote for Adams, and the Republican-Democratic electors for Jefferson; and since that time there has never been a case where an elector has voted contrary to the expectations of those who chose him. Candidates for President and Vice-President are now nominated by national conventions¹ of the political parties (usually held in June or July), composed of delegates from each State (two from each congressional district and four from the State at large). After the nomination of candidates by the national convention, State or district conventions of each party nominate electors whose sole function if elected is to vote for the candidates previously nominated. No provision of the constitution is stronger than the unwritten law that a presidential elector is required to vote for his party candidate.

Thus the judgment of the political party acting through its convention has been substituted for that of the individual electors. The letter of the constitution is followed, but not the spirit; for the President and Vice-President are in fact chosen by the people ^{Popular control of choice of President} acting through the machinery of political parties; and the electors are merely a cog in the machine. By thus suppressing the discretion of the electors and making them mere registers of the popular will, the Presidency has been made a democratic and a representative institution.

¹ See Chapter xxxvii.

358. The Inaugural Ceremony. The President-elect usually goes to Washington a short time before March 4, on which day the inaugural ceremony occurs.
Oath of office and address On the day of the inauguration, he is escorted by the committee in charge to the Executive Mansion or White House, and then, accompanied by the outgoing President, he proceeds to the capitol. The constitution requires that before entering upon his duties he shall take an oath to faithfully execute the office of President, and to preserve, protect, and defend the constitution. A platform is erected on the east front of the capitol, and here in the presence of immense throngs of people, the oath is administered by the chief justice of the United States.¹ The President then delivers an address outlining his proposed policies. This concludes the inaugural ceremony proper, after which the President returns to the White House and reviews a procession which is generally several hours in passing.

359. Presidential Term, Salary, and Qualifications. The original preference of the Constitutional Convention was ~~Four-year term~~ for a single term of seven years, but this was finally changed to a term of four years, with no restriction as to reëligibility. The term commences on the fourth day of March of each quadrennial year succeeding March 4, 1789. Precedent and custom having almost the force of law have placed a limit upon the number of terms a President may serve. Washington served two terms, but declined to be considered for a third, thereby establishing a precedent which has since been followed. In 1880 an effort was made to nominate ex-President Grant for a third term; but its failure served to strengthen the unwritten rule that no President is eligible for a third term.²

¹ This is merely a custom, not a law. The oath of office may be taken before any official entitled to administer an oath.

² Nine Presidents have been reelected as their own successors, namely Washington, Jefferson, Madison, Monroe, Jackson, Lincoln, Grant, McKinley, and Wilson, one President, Cleveland, was reelected after an intervening term; and Roosevelt was elected President after he had succeeded to the office upon the assassination of McKinley.

The qualifications prescribed by the constitution for the Presidency relate to citizenship, residence, and age. Natural-born citizens,¹ who have resided in this ~~qualifications~~ country at least fourteen years, and have attained the age of thirty-five years, are eligible. The Vice-President must have the same qualifications.

The compensation of the President is fixed by Congress, but may not be increased or diminished during the existing presidential term. The first salary act passed in 1789 fixed the President's salary at \$25,000 a year; in 1873 this was changed to \$50,000, and in 1909 to the present salary, \$75,000. In addition, Congress pays certain expenses connected with the White House, and makes other allowances for expenses incidental to the presidential office. The annual salary of the Vice-President is \$12,500.

360. **The Vice-President.** In case of failure to elect a President, or of his death, resignation, inability to discharge his duties, or removal by impeachment, the office ~~functions~~ devolves upon the Vice-President. The ordinary function of the Vice-President is to preside over the deliberations of the Senate; but he is not a member of this body, and his influence upon the Senate is ordinarily slight, since he does not appoint its committees and has no vote except in case of a tie.

The Vice-President is generally nominated not with reference to his fitness to succeed the President, but because of his "availability" — to help carry a doubtful ~~succession~~ State, or to placate a defeated faction in the nominating convention. Yet five times in our history the succession has devolved upon the Vice-President. By the death of Harrison in 1841 and of Taylor in 1850, Tyler and Fillmore, respectively, became Presidents; and by the

¹ The constitution restricts eligibility to "natural-born citizen, or a citizen of the United States at the time of the adoption of this constitution." The exception in this last clause was in favor of men of foreign birth (like Alexander Hamilton and James Wilson) who had performed splendid service during the Revolutionary period. It would have been ungracious to render such men ineligible to the presidential office; hence the exception, which of course is no longer of practical effect.

assassination of Lincoln in 1865, of Garfield in 1881, and of McKinley in 1901, Johnson, Arthur, and Roosevelt, respectively, succeeded to the Presidency.¹

361. Election of Vice-President by the Senate. The Vice-President is chosen by electors in exactly the same manner as the President; but if no person receives a majority of all the electoral votes for Vice-President, then in accordance with the constitution the Senate elects that officer from the two candidates having the highest number of electoral votes, a majority of the whole number of Senators being necessary to a choice. The Senators vote as individuals, each member having one vote.²

362. Statutory Presidential Succession. Congress is empowered to designate by law who shall succeed in case the offices of both President and Vice-President become vacant — a contingency which has never yet occurred.³ In 1886 Congress passed the present law, which, with later amendments, provides for succession by cabinet officers in the following order: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior. In order that the succession may devolve upon a cabinet officer, it is necessary that he shall have the constitutional qualifications prescribed for the Presidency.

¹ The succession of both Tyler and Johnson proved a serious disappointment to the party which had elected them. Each had been nominated because of his "availability" — to strengthen the ticket.

² Only once in our political history has the choice of Vice-President devolved upon the Senate. In the election of 1836, Richard M. Johnson received 147 electoral votes for Vice-President out of a total of 294, lacking one vote of the requisite majority. He was chosen by the Senate, the vote standing: Johnson, 33, Granger, 10.

³ The statute of 1792 provided that the President *pro tem* of the Senate should be next in succession, then the Speaker of the House, — a new presidential election to follow within two months.

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QUESTIONS AND EXERCISES

1. Discuss the arguments of Hamilton and Madison in the Constitutional Convention as to the length of the presidential term.
2. Prepare a report upon the methods of presidential election proposed in the Constitutional Convention.
3. What method of electing the President do you consider best? Reasons?
4. How many members in the electoral college at present? How is this number fixed? What number of electoral votes is necessary to a choice?
5. How many electors has your State? Which political party generally carries your State in presidential elections?
6. What qualifications are required in your State to entitle one to vote for presidential electors?
7. What would be the advantages of having electors chosen by congressional districts with two at large for each State, instead of upon a general ticket?
8. Describe the process by which the Presidency has been made a representative, democratic institution (Section 357). In other words, the difference between the theory and the practice of presidential elections.
9. Who were the candidates in the last presidential election? How were they nominated? Who were the candidates for Vice-President?
10. Who were the delegates-at-large from your State and the delegates from your district at the last Republican and Democratic national conventions? How were they chosen?
11. What electoral vote was received by each of the two principal candidates at the last presidential election? What was the popular vote for each?
12. What was the previous public service of our President before his election to the Presidency? Are successful governors often nominated for the Presidency?

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CHAPTER XXVI

THE PRESIDENT'S POWERS AND DUTIES

363. General Characteristics of the Federal Executive. The federal constitution, like the State constitutions, establishes the executive department as an independent and coördinate branch of the government; but unlike the State constitutions, it vests executive power in a single individual — the President. Elected as the representative of the nation, and entrusted with large powers and corresponding responsibilities, the President is the most imposing as well as the most powerful factor in our national government. "A chief magistrate who wields the whole military and no inconsiderable share of the civil power of the state, who can incline the scale to war and forbid the return of peace, whose veto will stay the course of legislation, who is the source of the enormous patronage which is the main lever in the politics of the United States, exercises functions which are more truly regal than those of an English monarch."¹

Since the executive is an independent branch of the government, it follows that in the performance of his duties the President is subject to the control of no other department or body. "The grand theory of the constitution makes him a co-equal in the tri-partite organization. He draws his power from the same source as the national legislature and judiciary; he is answerable to neither; his discretion is as absolute as that of any legislator, and more so than that of any judge; no other branch of the government may rightfully interfere with him in the exercise of that discretion."² Hence it follows that the Pre-

¹ Hale, J. I. C., *American Constitutional Law*, i, 173.

² Pomeroy, J. N., *Constitutional Law of the United States*, sec. 651.

sident is privileged from the jurisdiction and process of any court. He cannot be arrested for any reason whatsoever, and is answerable for misconduct only before one tribunal — the Senate of the United States organized as a court of impeachment.

364. Classification of Executive Powers. The powers of the President are enumerated in Article II, Sections 2 and 3 of the constitution, and may be classified as follows: (1) military powers; (2) administrative powers; (3) diplomatic powers; (4) legislative powers; (5) judicial powers.

365. Military Powers of the President. The President's military powers arise (1) by virtue of his position as commander-in-chief; (2) from his general duty to enforce the laws; and (3) from the federal guaranty to the State governments of protection against invasion or domestic violence.

366. Position as Commander-in-Chief. The constitution provides "that the President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into actual service of the United States."¹ By virtue of his position as commander-in-chief, the President regulates the disposition of the military and naval forces, both in time of peace and war; he appoints and dismisses all officers both of the army and navy; supervises the execution of the military law by which the army and navy are governed; calls out any part of the State militia when in his judgment such action is necessary to execute the laws of the Union, suppress insurrection, or repel invasion; and when war has been declared or when hostilities actually exist, he wages war as supreme commander. Not that the President is expected to take the field in person, but he has general charge of military movements. "In theory he plans all campaigns, establishes all blockades and sieges, directs all marches, fights all battles."²

¹ Constitution, Art. II, Sec. 2.

² Poweroy, J. N., *Constitutional Law*, sec. 704.

In time of war the President's powers may so expand as to make him almost a dictator, as was the case with President Lincoln during the Civil War, and also practically with President Wilson during the great World War which we entered in 1917. Without waiting for action by Congress, President Lincoln proclaimed a blockade of the Southern ports, called for 75,000 volunteers, and increased the regular army by 22,000 men. Later, by the exercise of his authority, the writ of *habeas corpus* was suspended; martial law was declared in many districts; arrests were made upon military warrant with trial before military courts; and provisional governments were established in hostile territory. Finally, — the crowning example of the President's absolute power in time of war, — the Emancipation Proclamation was issued (January 1, 1863), freeing the slaves in the States then in rebellion.

In the great struggle against the aggression of Germany, Congress clothed the President with every power necessary to the successful prosecution of the war, including control of food, fuel, shipbuilding, railway transportation, the telegraph and wireless systems, besides making liable for military service every able-bodied man between the ages of eighteen and forty-five years.

367. **Duty to enforce the Laws.** The exercise of the President's military powers may at any time result in consequence of his important and comprehensive duty to "take care that the laws be faithfully executed."¹ Ordinarily the execution of the laws proceeds along peaceful lines and can be carried on through the civil administration. Individuals who violate federal laws are arrested by United States marshals or their deputies, and tried before the proper federal court. But in case resistance to federal law becomes so serious that the civil powers cannot cope with it, the President is authorized to

¹ Constitution, Art. II, Sec. 3.

employ the military arm of the government to restore order; and it is for him to determine when such necessity exists, and which branch of the military service — the militia or the regular army — shall be used.

On several occasions in our history the President has found it necessary to use military force in order to execute the laws. In 1794 President Washington called out the militia from four States in order to suppress the so-called Whiskey Rebellion. The Civil War was of course the most notable instance when the Executive was obliged to resort to military force to execute the laws. Again, during the railway strikes of 1877 and 1894, mob violence interfered with the performance of certain functions of the national government, especially the transportation of the United States mails; and on both occasions regular troops were employed to overcome the resistance.

368. Protection of the States. The constitution provides that "the United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence."¹ In order to give effect to this guaranty against domestic violence, Congress has authorized the President, on application of the State legislature or executive, to order out such numbers of the militia as he deems necessary to suppress the insurrection. It is for the President to decide whether the exigency exists upon which the federal government is bound to interfere.² In case of a conflict between rival State governments, it may devolve upon him to determine which is the rightful authority and to suppress the opposition.³

¹ Constitution, Art. iv, Sec. 4.

² Luther v. Borden, 7 How. 1; Thayer's Cases, I, 193.

³ Thus in the case of Dorr's rebellion in Rhode Island (1841-42), the President recognized the charter governor as the lawful executive and took steps toward calling out the militia to support his authority; and because of this action the rebellion collapsed. Again in 1873 a conflict between two rival governments in Louisiana was settled by federal troops.

Under some circumstances the President need not await ^{Intervention} the application of the State authorities before ^{to execute} intervening. For example, if domestic violence ^{federal law} within a commonwealth violates federal law and interrupts the discharge of the functions of the national government, the President may act without awaiting the application of the State government. In such cases federal intervention is authorized under the clause of the constitution requiring the President to "take care that the laws be faithfully executed."¹

369. **Administrative Powers.** The chief administrative function of the Executive is to carry into effect the laws ^{Federal ad-} passed by Congress. In discharging this duty the ^{ministration} President is aided by a large number of executive ^{centralized} officials, who are responsible to him as head of the administration. Most of these officers are appointed by the President either directly or through his immediate subordinates; and practically all of them, from cabinet officer down to federal marshal, may be removed by him. Thus the distinctive feature of the federal administration is the direct control exercised by the President through his power of appointment and removal. In sharp contrast with the State executive, the President is the actual as well as the nominal head of the administration.

370. **The Power of Appointment.** The President's power of appointment is conferred by the constitution in the following provision: "He shall nominate, and by ^{Constitu-} ^{tional pro-} ^{vision} shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper, in

¹ A notable instance of intervention under these circumstances was President Cleveland's action during the great railway strike of 1894, when he ordered United States troops into Illinois to enforce the postal laws and the provisions of the Interstate Commerce Act.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

This year of 1910 is drawing to a close. The records of population and harvests which are the index of progress show vigorous national growth and the health and prosperous well-being of our ~~country~~ throughout this land and in our possessions beyond the seas. These blessings have not descended upon us in restricted measure, but overflow and abound. They are the blessings and bounty of God.

We continue to be at peace with the rest of the world. In all essential matters our relations with other peoples are harmonious and ever growing in cordiality of friendship and depth of recognition of mutual dependence. It is especially to be noted that during the past year great progress has been achieved in the cause of arbitration and the peaceful settlement of international disputes.

Now therefore I, William Howard Taft, President of the United States, do hereby, according with the custom of the day, issue a call for the settlements in his land and with the care established from the foundation of this Government, do appoint Thursday November 24, 1910, as a day of National Thanksgiving and Prayer among the people upon that day to give thanks to the Author of the Moral Authority and certain mercies to the United States and the Government of the United States.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE in the City of Washington this 1st day of

November in the year of our Lord one thousand nine hundred and ten.

In the United States the one hundred and first year.

William Howard Taft
President

Alvin A. Adams
Secretary of State

Wm. H. Taft

A PRESIDENTIAL PROCLAMATION



the President alone, in the courts of law, or in the heads of departments."¹ The officers whose appointments are "otherwise provided for" are the President and Vice-President, the presidential electors, members of the Senate and House, and the several officers of these two houses. All other officers of the United States are appointed either: (1) by the President subject to confirmation by the Senate; or (2) in the case of inferior officers, by the President alone, by the courts of law, or by the heads of departments.

371. Officers appointed by Concurrent Action of President and Senate. The class of officers appointed by the President with the advice and consent of the Senate is comparatively small (12,000 out of 517,000 federal officials), but it comprises the most important officers of the government.² The customary process of appointment is for the President, after private conference with individual Senators from the States in which the appointees live,³ to send to the Senate the names of the persons selected for certain offices. The Senate refers these nominations to the appropriate standing committee; and the committee confers with the Senators of the State from which the nominee comes (if of the same political party as the President) to ascertain whether there is objection to the appointment. A report is then made to the Senate either favorably or adversely to the nominee, and that body confirms or rejects the appointment. If the nomination is confirmed, the President on being notified issues a commission

Process in
making ap-
pointments

¹ Constitution, Art. II, Sec. 2.

² In this class are included all ambassadors, ministers, and consuls; all federal judges; most military and naval officers, cabinet officers and their immediate subordinates; the treasurer of the United States; the comptroller of the currency, superintendents of mints; commissioners of internal revenue, collectors of customs and internal revenue, interstate commerce commissioners, commissioners of patents, commissioner of pensions; pension agents, land agents, Indian agents, district attorneys and marshals, territorial governors, and postmasters of the first, second, and third classes (all whose salary is \$1000 or over).

³ Provided those Senators are of the same political party as the President. In the case of minor appointments within a congressional district, the President ordinarily confers with the Representative from that district (if of the same political party as the President), and is more or less guided by his recommendation.

condemned this system in theory, but likewise followed it in practice; and thus the spoils system became a permanent feature of American politics. Its demoralizing effects upon the public service continued unchecked until the administration of President Arthur (1883).

376. Civil Service Reform. Finally, in 1883 public opinion compelled Congress to pass a Civil Service Act¹ designed to make appointment to subordinate executive offices depend upon individual merit, rather than upon partisan service. This act created the United States Civil Service Commission, consisting of three persons (not more than two belonging to the same political party), appointed by the President with the consent of the Senate. Other important provisions are as follows: (1) It provides for open, competitive, practical examinations for all applicants for positions in the classified service. (2) These positions are to be filled by selection according to grade from among those applicants standing highest on the examinations, a period of probation to precede final appointment. (3) Appointments are to be apportioned among the several States and territories according to population. (4) No appointee can be required to contribute to any political fund or to perform any political service. (5) No Senator or Representative is allowed to recommend any applicant to the examining board. (6) The appointing power is required to notify the commission of the selection of applicants from those recommended as a result of the examination; also of the rejection of applicants after probation, and of transfers, resignations, and removals.

The Civil Service Commission appoints a chief examiner and boards of examiners who conduct examinations not less than twice each year at Washington, D.C., and in the various States and territories. These examinations are

¹ Civil service denotes the executive branch of the government, as distinguished from legislative, judicial, military, and naval offices.

practical in character, having special reference to the nature of the work which the applicant is to perform. The commission has instituted a system of promotion from the lower to the higher grades of the public service, thus encouraging efficiency by enabling competent officials to advance to higher positions.

The number of officers included under the original act was about 14,000. Subsequent Presidents, especially Cleveland, Harrison, and Roosevelt, have greatly extended its operation by executive orders, until at present the total number of federal employees subject to the merit system is about 330,000. The classified service now includes nearly all the clerks in Washington (the so-called departmental service); officials in the postal service, including letter-carriers and clerks in post offices and the railway mail service; together with employees in customs houses, in the revenue service, the government printing-office, and the Indian service.

The merit system of appointment has greatly improved the public service. It proceeds upon the theory that a public office is a public trust, not the political prize of a party victory. It makes appointment to such office depend upon merit, and promotion upon efficiency, thus placing government service as nearly as possible upon a business basis. Undoubtedly it has defects, but it marks a great advance upon the proscription and demoralization that existed for over fifty years under the spoils system.

377. **Diplomatic Powers.** The President's diplomatic powers include: (1) the power to appoint ambassadors, ministers, consuls, and other commissioners to foreign countries; (2) the power to receive foreign ambassadors and representatives; (3) the power to make treaties by and with the advice and consent of the Senate. Through the agency of our representatives abroad, the President has sole control of the ordinary intercourse between the United

States and other nations; but his power to conclude treaties or formal compacts with other nations is shared by the Senate.

378. Appointing and receiving Ambassadors. The constitution provides that the President shall appoint all ambassadors, other public ministers, and consuls, subject to the consent of the Senate; but once appointed, these officers are under his sole control.

Control of foreign intercourse "They communicate alone with the Executive through the State Department. Instructions are sent to them, dispatches forwarded, demands made, claims insisted on, principles adopted and enforced, as the President deems proper."¹ The management of foreign affairs is entrusted to the Department of State, at the head of which is the Secretary of State, who acts under the direct personal control of the President.

The President's power to receive ambassadors and other public ministers is in most cases merely a ceremonial duty; **Receiving foreign representatives** but it may involve important consequences, since the President must exercise his discretion in receiving, or refusing to receive, the minister from a state claiming to be independent, but whose independence has not been generally recognized. Moreover, he may refuse to receive a particular person in those exceptional cases where the foreign representative is personally objectionable (*persona non grata*) to our government. Should relations between the United States and a foreign power become seriously estranged, the President may dismiss the foreign minister, thus involving a suspension of diplomatic relations and the probability of war. The President's power of regulating foreign intercourse is a momentous one: he cannot declare war, but he can so conduct foreign affairs as to incline the scale toward peace or war.²

¹ Pomeroy, J. N., *Constitutional Law*, sec. 671.

² In 1846, before the outbreak of the Mexican War, President Polk ordered troops into the disputed territory, where they were attacked by the Mexicans; and Congress then declared that "war existed by the act of the Republic of Mexico." At a later date, President

379. The Power to make Treaties. By the constitution the President is vested with the power to negotiate treaties and conventions with other countries. The negotiation of treaties is conducted by the President through the Department of State; but during the process of negotiation he generally consults with the Senate committee on foreign relations, and with the leaders of the senatorial majority. After the treaty has been framed, it is submitted to the Senate, where it is discussed in executive or secret session. Ratification requires the affirmative vote of two thirds of the Senators present. If finally accepted by both nations, duplicate parchment copies signed by the accredited representatives are exchanged; and the President then publishes the treaty by means of a proclamation. By a provision of the federal constitution, treaties are made a part of the supreme law of the land; and hence any conflicting provision of a State law or constitution is thereby abrogated.¹

*Negotiation
and ratifica-
tion*

380. Legislative Powers. The powers of the President in legislation may be considered under three heads: (1) his power of convening and adjourning Congress upon extraordinary occasions; (2) his power to recommend desirable legislation; (3) his power to veto any measure passed by Congress.

381. Convening and adjourning Congress. Unforeseen contingencies may arise during the recess of Congress which imperatively require the assembling of that body; hence the constitution provides that the President may, "on extraordinary occasions, convene both houses or either of them."² A newly inaugurated President often calls an extra session of the Senate alone, to consider nominations to cabinet offices and other important positions; and in

Cleveland's famous Venezuelan message seemed likely to involve this country in war with Great Britain.

¹ Treaties and laws of Congress are of equal authority, and if there is a conflict between a statute and a treaty, the later law whether statute or treaty prevails; and the earlier one is, to the extent of the conflict, displaced.

² Constitution, Art. II, Sec. 3.

exceptional cases it may be necessary to convene the Senate in special session for the consideration of a treaty.

382. Power to recommend Legislation. The constitution enjoins upon the President the duty to "give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."¹ Under Washington and Adams, it was the practice for the President to deliver an oral address to the two houses assembled in joint convention. Jefferson inaugurated the present custom of sending to each house by a private secretary a written copy of the annual message.² This document generally discusses the important political questions of the day, points out defects in existing legislation, and suggests remedies. It is not customary for the President or his cabinet to prepare and present bills, although proposed measures are often submitted to him for comment, and are sometimes drawn in accordance with his suggestions. But with regard to most legislation, the President's initiative is limited to suggesting or outlining desirable policies; and for the adoption of his recommendations he relies upon private conference with members and committees, and upon personal influence with the party and committee leaders in each house.

383. The Presidential Veto. By far the most important of the President's legislative powers is his veto. Every bill, *Modes of dealing with bills* order, resolution, or vote to which the concurrence of the two houses is necessary (except a question of adjournment or a proposed constitutional amendment) must be presented to the President for his approval. When a bill is sent to the President, he may deal with it in one of four different ways. (1) He may sign it, whereupon it becomes a law — the usual course with most bills. (2) He may leave it unsigned, and at the end of ten

¹ Constitution, Art. II, Sec. 3.

² President Wilson has returned to the precedent established by Washington and Adams by reading his important messages to the two houses assembled in joint meeting.

days (Sundays excepted), it becomes a law without his signature. (2) He may veto the bill — that is, return it with his objections to the house in which it originated. The objections are then entered at large upon the journal, whereupon the bill can become a law only by being passed by a two-thirds vote of each house; and the vote in such cases must be by roll-call. (4) In case Congress adjourns before the expiration of the ten days given to the President for the consideration of every bill, he may defeat the measure by refraining from signing it — this being an exercise of the so-called "pocket veto."

The presidential veto is thus a limited or qualified one, operating as a salutary check on hasty or ill-advised legislation. Originally designed as a check upon unconstitutional measures, especially legislative encroachments upon the executive or judiciary, the veto power has been freely used in practice to defeat legislation deemed by the executive to be unwise or inexpedient. Hence the principle is now well settled that the President is to use his independent judgment on every bill passed by Congress, "not sheltering himself under the representatives of the people, or foregoing his own opinion at their bidding."

Theory of
the veto
power

The use of the veto power is restricted by the fact that the President must approve or reject the bill as a whole; he cannot, for example, veto particular items in an **Rider** appropriation bill. Hence measures which otherwise could not receive the executive sanction are sometimes inserted as "riders" in appropriation bills, thereby compelling the Executive either to accept the obnoxious rider, or to incur the responsibility of defeating indispensable appropriations.

384. Judicial Powers. The President has power "to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."¹ "A pardon **Pardoning power** is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts

¹ *Constitution*, Art. II, Sec. 2.

the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed."¹ The language conferring this power is general, and hence the pardon may be absolute or conditional; may be issued before or during the trial of the accused, or after conviction and sentence; and may be granted to one or a class of individuals. The President's power to pardon extends only to offenses against federal, not State laws; and he cannot pardon in case of impeachment.

A reprieve is simply the suspension of a sentence, deferring its execution without changing the substance of the punishment.

~~Heinrich~~ GENERAL REFERENCES

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¹ *United States v. Wilson*, 7 Pet. 180.

QUESTIONS AND EXERCISES

1. May Congress assign to the President duties not specified in the constitution? Or forbid the exercise of duties imposed by the constitution?
2. May Congress require the President to state reasons for an official action?
3. May the President be sued on account of an official action? May he be summoned as a witness?
4. What powers may the President exercise under his authority to execute the laws of the Union?
5. Prepare a report upon the military powers exercised by President Lincoln and by President Wilson.
6. Explain how the President may involve the country in war notwithstanding the right to declare war is vested in Congress.
7. Prepare a report upon the President's power to suppress domestic violence as exemplified by President Cleveland's action in 1894. (*McClure's Magazine* (1904), xxiii, 227-240.)
8. May Congress designate persons to be promoted in the military service? In creating an office, may Congress designate the person who shall fill it?
9. May Congress provide by law that an executive official shall hold office during good behavior?
10. May Congress by statute require the heads of departments to be responsible directly to Congress?
11. Give a history of the Tenure of Office Act of 1867.
12. Has the Senate any control over removals? Why should the President alone exercise the power of removal?
13. May Congress by statute provide that the President shall state reasons for removals?
14. Prepare a list of the principal officers appointed by the President subject to confirmation by the Senate; of officials appointed by the President alone; by the heads of departments.
15. Compare the President's power of appointment with that of your State governor; of your mayor.
16. Make the same comparison with regard to the President's power of removal.
17. May an official of the United States at the same time hold office under a State or territorial government?
18. Prepare a report upon the Spoils System.
19. Prepare a report upon Civil Service Reform.
20. Examine a copy of the President's message to Congress and ascertain: (a) what topics receive most consideration; (b) what recommendations are made as to legislation. State which of these recommendations were enacted into law.
21. May the President sign a bill after Congress adjourns?
22. May either house require the President to submit papers?
23. Was President Johnson bound to carry out the reconstruction acts which he vetoed?
24. What would be the advantage of giving the President power to veto part of a bill? How could this be done?
25. Discuss fully the treaty which closed the Spanish-American War, especially (a) the process of negotiation, (b) the chief provisions, (c) the method of ratification.

Review

CHAPTER XXVII

THE EXECUTIVE DEPARTMENTS

385. The Federal Executive Departments. Ten federal executive departments have been created by Congress to assist the President in carrying out his executive and administrative duties; and the heads of these departments comprise what is popularly called the President's cabinet. The executive departments are not directly established by the constitution, but are recognized in the clause providing that the President "may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices."¹

Constitutional provision

The executive departments were organized by Congress in the following order:—

State, 1789; War, 1789; Treasury, 1789; Post Office, 1794;² Navy, 1798; Interior, 1849; Justice, 1870;³ Agriculture, 1889;⁴ Commerce, 1903; Labor, 1913.

386. The President's Cabinet. The heads of these ten departments are appointed by the President, subject to the consent of the Senate. Since they are his confidential advisers, each President ordinarily forms a new cabinet, the members of which hold office during his pleasure. Sometimes the President selects for cabinet positions men who have had little experience in politics, but more frequently he chooses prominent party

Appointment and meetings

¹ Constitution, Art. II, Sec. 2, Par. 1.

² The Postmaster-General did not become a member of the cabinet until 1829.

³ The office of attorney-general has existed since 1789, although the Department of Justice was not organized in its present form until 1870.

⁴ The Department of Agriculture was organized in 1862, but the Secretary did not become a cabinet officer until 1889.

leaders. Cabinet meetings are generally held twice a week during the greater part of the year, special meetings being called as occasion demands. The President also confers frequently with individual members. The cabinet is an advisory body only, and the President may act in opposition to the wishes of any or all of his secretaries.

The American cabinet is in marked contrast with the cabinet in Great Britain and many other European countries. There the term cabinet denotes a parliamentary ministry, that is, a group of men chosen from the majority party in the legislature, to which body they are accountable. The cabinet members have seats in the legislature, where they initiate legislation and defend the measures which they introduce. Responsibility for the administration rests upon them, and when they cease to have the support of a majority of the legislature, they are expected to resign, in order that a new cabinet may be formed. The American cabinet, on the other hand, is accountable not to the legislature but to the President. Its members may not serve in Congress, and hence they do not introduce and defend measures in that body. An adverse vote of Congress could not remove them from office, since they are appointed by the President, and responsible to him for their administration of affairs.¹

387. The Department of State. The Secretary of State ranks first among the members of the cabinet. His chief duty is to conduct the foreign affairs of the government under the direction of the President. He issues instructions to our ministers and consuls, conducts treaty negotiations, receives and presents to the President the representatives of foreign powers, issues passports to American citizens traveling abroad, and in general has charge of all matters relating to foreign affairs.

The Secretary of State also has important domestic

¹ Congress of course exercises indirect control over the executive departments through its power to make appropriations, to investigate the management of any department, and to impeach any executive official for misconduct.

duties. He has the custody of the great seal of the United States; has charge of the publication of the federal statutes and executive proclamations; keeps the archives containing the originals of all laws, treaties, and foreign correspondence; and serves as the medium of communication between the President and the State govern-

The Department of State includes seven bureaus — the diplomatic bureau, consular bureau, and the bureaus of indexes and archives, of accounts, of rolls and library, of appointments, and of citizenship. At the head of each bureau is a chief; and the Secretary of State is further aided in his work by three assistant secretaries of state, who have immediate supervision of diplomatic correspondence, and by a director of the consular service.

388. **Department of the Treasury.** The chief business of the Treasury Department is the supervision of the national finances. The Secretary of the Treasury prepares plans for the improvement of the public revenue, and annually submits to Congress estimates of probable receipts and expenditures. He supervises the collection of customs and internal revenue; prescribes the forms for keeping public accounts; issues warrants for all money paid out of the treasury; selects the depositories of public moneys; makes loans by issuing bonds for the protection of the gold reserve or other purposes; and supervises the many bureaus in the Treasury Department. Three assistant secretaries have immediate charge of certain bureaus, and perform such other duties as the Secretary may assign to them.

The department organization includes the following officers: the treasurer, the register, the comptroller of the currency, the farm loan commissioner, the director of the bureau of the budget, the commissioner of internal revenue, director of the mint, direc-

tor of the bureau of engraving and printing, chief of the secret-service division, the commandant of the coast guard, director of war-risk insurance, commissioners of military, naval, and marine insurance, superintendent of the life-saving service, the supervising architect, and the surgeon-general of the public health service.

389. **The Department of War.** The Secretary of War has charge of all matters pertaining to national defense and sea-coast fortifications, the administration of the insular possessions, river and harbor improvements, ^{Duties of Secretary} and the prevention of obstructions to navigation. He prepares estimates of appropriations for the expenses of his department, supervises all expenditures for the support and transportation of the army, issues orders for the movements of troops, recommends appointments and promotions, and has charge of the Military Academy at West Point.

The administrative work of the War Department is carried on by numerous bureaus. At the head of each is an army officer detailed for a period of four years. These ^{Administrative officers} are as follows, the title indicating the ^{the bureaus} functions of each: the adjutant-general, inspector-general, surgeon-general, chief of ordnance, chief signal officer, chief of engineers, chief of the coast artillery division, chief of the militia bureau, quartermaster-general, judge-advocate-general, chief of the bureau of insular affairs, chief of the air service, chief of the chemical warfare service, and the provost-marshall-general.

In order to unify the work of the several bureaus, and to harmonize the relations between the staff officers (in charge of bureaus) and the line officers (in charge of ^{The general staff} troops), Congress in 1903 created the general staff, which is in effect a supervising military bureau. The chief of staff, an army officer designated by the President for a term of four years, has general supervision over the administrative offices, as well as control of all troops of the line. In addition to the chief, the general staff consists

of officers of various ranks who prepare plans for the national defense, investigate and report upon the efficiency of the army, advise the Secretary of War, and aid in co-ordinating the work of the several administrative bureaus.

390. The Department of Justice. The Attorney-General is the head of the Department of Justice, and the chief law officer of the government. He represents the government in all cases to which the United States is a party, and gives his advice and opinion concerning questions of law to the President or the heads of the executive departments. He exercises general supervision over the federal district attorneys and marshals, receiving their reports and examining their accounts; examines the titles of lands which the government intends to purchase for public purposes; and makes an annual report to Congress concerning the business of his department. To the Department of Justice is also assigned supervision of the penal and reformatory institutions of the United States, the investigation of applications for pardons, and supervision of the commission to codify the federal criminal laws.

The second law officer of the Department is the solicitor-general, who assists in the general duties of the Department and acts as Attorney-General in case of vacancy in that office.

391. Post-Office Department. The Postmaster-General is charged with the general supervision of the postal service.

Duties of Postmaster-General He awards and executes contracts for the transportation of the mails, and directs the management of the domestic and foreign mail service. There are four assistant postmasters-general, each of whom has charge of a group of services within the department.

The business of carrying letters is a government monopoly, private competition being strictly prohibited. In the carrying of books or merchandise, competition is allowed, and the sender may choose between the express company and the postal service.



(By courtesy of the Monahan Express Company)

THE POST OFFICE AT NEW YORK CITY

The trucks in the foreground are used in the Parcel Post delivery service. A legend on the cornice of the building reads "Neither snow, nor rain, nor heat, nor gloom of night stays these couriers from the swift completion of their appointed rounds."



(By courtesy of the Treasury Department)

THE POST OFFICE AT ATLANTA, GEORGIA

One of the newest buildings.



THE LIBRARY OF CONGRESS
Washington, D. C.



THE PATENT OFFICE
Washington, D. C.

In many European countries, the post-office department through the parcel post carries on what amounts to an express business. Yielding to a general demand ^{Parcel} ^{post} for a similar service in this country, Congress in 1912 authorized the establishment of a parcel post. More than two billion parcels are now transported each year by this branch of the service.

Both domestic and international money-orders are issued by the post office. Money may be transmitted by depositing the desired amount with the local postmaster, ^{Money-} ^{orders} who issues an order directing the postmaster of the place to which the money is to be sent to pay the sum to the person named in the order. A nominal fee is charged, varying according to the amount of the order.

Nearly all the principal countries conduct a system of postal savings-banks in connection with the post office, and Congress in 1910 authorized such a system for ^{Postal sav-} ^{ings-banks} the United States. The telegraph system in foreign countries is commonly controlled through this department, but in the United States it has remained in private hands, except during the World War.

The United States is a member of the Universal Postal Union, which includes all important countries in a single postal territory for the reciprocal exchange of correspondence. A uniform rate of postage is fixed, ^{Universal} ^{Postal Union} and the mail facilities of each country are placed at the service of all the others. At stated intervals an accounting is made to adjust the balances.

392. Department of the Navy. The Secretary of the Navy, aided by an assistant secretary, superintends the construction, armament, and employment of war vessels, ^{Duties of} ^{Secretary} and also exercises general supervision over the naval service. This Department has charge of the Naval War College at Newport, and the Naval Academy at Annapolis.

The administrative work of the Department is carried

on by eight bureaus, the names of which indicate the work done. These are the bureaus of ordnance, navigation, yards and docks, supplies and accounts, engineering, medicine and surgery, aeronautics, and construction and repairs. Most of these are in charge of line officers of the navy, with the rank of rear admiral; and other naval officers are assigned to bureau duties from time to time, this service alternating with service at sea.

393. Department of the Interior. In the importance and diversity of its business, the Department of the Interior ranks as one of the greatest of the executive departments. The Secretary of the Interior (aided by two assistant secretaries) is charged with the supervision of the public lands and surveys, pensions, patents, Indian affairs, education, and the geological survey. He also supervises the national parks and reservations, and the organized territories; distributes the appropriations for agricultural and mechanical colleges throughout the Union; and supervises certain hospitals and charitable institutions in the District of Columbia.

The business of the Department is carried on by various bureaus: the general land office, bureau of patents, bureau of pensions, office of Indian affairs, bureau of education, geological survey, reclamation service, bureau of mines, and the national park service. Each bureau is in charge of a principal officer called a commissioner, who is appointed by the President with the consent of the Senate.

The commissioner of the general land office has charge of the survey, management, and sale of the public domain.

The General Land Office Nearly two thirds of the present area of the United States has at one time or another formed a part of the public domain belonging to the national government. This immense territory has been acquired by cession, purchase, and conquest. The greater part has been disposed of in various ways, chiefly by sale

at a nominal price to individual settlers, or as bounties for military or naval service, or as grants to corporations for the purpose of aiding the construction of railroads, or as grants to the States in aid of education and internal improvements. Under the Homestead Act, any adult citizen of the United States who is the head of a family, and is not already the proprietor of 160 acres of land, is entitled to enter a quarter section (160 acres) of unappropriated public land. He may acquire title by maintaining his residence upon it, improving and cultivating the land for a period of three years, and the payment of nominal fees.

394. Other Bureaus of the Interior Department. The commissioner of patents is charged with the administration of the patent laws. He performs important duties of a judicial nature, since he acts as a tribunal in deciding whether a patent may be granted, and in settling disputes between rival claimants to the same invention. The commissioner is aided by an assistant commissioner, a board of three examiners-in-chief, and a large staff of examiners, clerks, and assistants. The Patent Office is self-supporting, the fees from patents more than covering the expenditures of the office.

Commiss-
ioner of
patents

The commissioner of pensions, aided by two deputy commissioners, supervises and decides claims for pensions on account of military or naval service. Pension agencies located in various parts of the country facilitate the payment of claims. In the granting of military pensions the United States has been more liberal than any other nation, having paid out for this purpose a total of over four billion dollars.

Commiss-
ioner of
pensions

The bureau of Indian affairs looks after matters pertaining to the Indian tribes, especially their lands, moneys, supplies, and schools. Since 1871 Congress has recognized the actual status of the Indians as wards of the government, and has dealt with them as individuals, rather than as tribes; and so far as

Commiss-
ioner of
Indian
affairs

possible, lands have been allotted to them in individual ownership.

It is the duty of the commissioner of education to collect statistics as to the condition and progress of education in the various states and in foreign countries; to publish information respecting the organization and management of school systems and methods of teaching; and in general to promote the cause of education throughout the country. Under our system of government, direct control of the public-school system is in charge of the individual States; and hence the duties of the bureau of education are chiefly advisory. Nevertheless, the investigations and reports of the bureau have been of the greatest value to educators, especially the annual report, which gives detailed statistics concerning public and private education in the United States, as well as a summary of educational work in foreign countries.

The director of the geological survey has charge of the classification of public lands, and the examination of the geological structure, mineral resources, and products of the national domain.

The director of the reclamation service has charge of the survey, construction, and operation of irrigation works on arid lands. In many parts of the West, the federal government is performing an economic service

service of the highest value in reclaiming vast areas of desert land through the construction of great irrigation dams and reservoirs. The lands irrigated in this way are sold to actual settlers upon small annual payments, which will ultimately cover the cost of constructing the irrigation works; and the funds thus obtained are used for the construction of additional reclamation projects. In this way, hundreds of thousands of acres of desert land are being made highly productive.

395. The Department of Agriculture. The Secretary of Agriculture has general supervision over all scientific in-



THE GREAT GARLAND CANAL ON THE SHOSHONE PROJECT, WYOMING

This is sixty miles long and distributes the water stored by the Shoshone Dam over an area of 125,000 acres.



THE TRUCKEE RIVER IRRIGATING CANAL, NEVADA

This shows the concrete construction and one of the flood-gates through which the river water enters the canal.

UN
SO
E

vestigations relating to the agricultural industry. He directs the investigations and experiments designed to give farmers useful information concerning soils, grains, fruits, and stock. Through his Department, millions of packages of seeds are distributed gratuitously, and with them is sent information obtained by constant experiment. The Secretary has charge of quarantine stations for imported cattle, and the inspection of domestic meats and imported food products. The Department issues a large number of scientific and technical publications, including the Year-Book, the series of Farmers' Bulletins, the Monthly Weather Review, and the Crop Reporter.

The organization of the Department of Agriculture includes the following bureaus and divisions, the titles of which indicate the nature of the work performed: the office of farm management, the weather bureau, bureau of animal industry, bureau of plant industry, forest service, bureau of chemistry, bureau of soils, bureau of statistics, bureau of entomology, bureau of biological survey, office of experiment stations, division of accounts and disbursements, division of publications, bureau of crop estimates, library, office of public roads and rural engineering, bureau of markets, insecticide and fungicide board, and federal horticultural board.

396. Department of Commerce. The Department of Commerce, created by Congress in 1903, "fosters, promotes, and develops the foreign and domestic commerce, the mining, manufacturing, shipping, and fishing industries, and the transportation facilities of the United States." This Department has charge of the promotion of American manufactures, the census, statistics, lighthouses, coast survey, and steamboat inspection.

The Department organization includes many important bureaus: the bureau of foreign and domestic commerce, bureau of lighthouses, bureau of the census, coast and geodetic survey, steamboat-inspection

service, bureau of fisheries, bureau of navigation, and bureau of standards.

397. Department of Labor. This is the youngest of the executive departments, having been created in 1913. The department of labor performs for the labor interests of the country services similar to those performed for agriculture and commerce by their respective departments. It collects and publishes information upon all subjects connected with labor, especially its relation to capital, the hours and wages of labor, and the means of advancing the interests of the laboring classes. The department serves the general public, as well as labor and capital, by endeavoring to preserve industrial peace, and to adjust labor disputes through conciliation.

One of the most important bureaus in this department is the bureau of immigration, which supervises the administration of our immigration laws. Another is the bureau of naturalization, which keeps a record of immigrants and aids in the work of making them naturalized citizens of this country. There is also a children's bureau, which investigates matters pertaining to the welfare of children and child life, such as the employment of children in industry, especially in dangerous occupations; also such subjects as infant mortality, desertion, orphanage, and juvenile courts.

398. Independent Boards and Commissions. In addition to these ten executive departments, the heads of which form the President's cabinet, many independent boards and commissions perform duties not assigned to any of the departments. These commissions have been established in order to carry on work that requires the deliberation of experts, rather than the decision of a single individual. Unlike the heads of the executive departments, members of commissions are not at once replaced when a new President takes office. In many cases they serve for a term of from six to twelve years, so that

only a part of the members are appointed by any one President. This secures greater continuity of administration, besides making the commissions less political in character than would be the case if all the members were changed with each new administration.

(1) The Civil Service Commission, created in 1883, consists of three members appointed by the President with the consent of the Senate. This important commission has charge of the administration of the Civil Service Act (*see page 304*). Civil
Service
Commission

(2) The Interstate Commerce Commission consists of eleven members, appointed by the President with the consent of the Senate for a term of seven years. This commission has supervision over all common carriers engaged in interstate commerce, including railroads, steamboats, express companies, telegraph, telephone, cable, and wireless-telephone companies (*see pages 394-396*). Interstate
Commerce
Commission

(3) The Federal Trade Commission, created by the act of 1914, consists of five appointive members whose term is seven years. This commission has power to investigate corporations other than those engaged in interstate commerce, and possesses certain quasi-judicial functions in the enforcement of the anti-trust laws (*see pages 397-398*). Federal
Trade
Commission

(4) The United States Tariff Commission, established in 1916, consists of six members appointed for twelve years, not more than three of whom may belong to the same political party. The commission investigates the administration and industrial effects of our own tariff laws, as well as those of foreign countries. It was created in order to give Congress and the President scientific data on which to base tariff legislation, in the hope of reversing our customary policy of treating the tariff as a political issue. United
States
Tariff
Commission

(5) The Federal Reserve Board was created by the act

of 1913 for the administration of the federal reserve system (*see pages 376-378*). It consists of five members appointed for a term of ten years, besides two *ex officio* members, the Secretary of the Treasury and the Comptroller of the Currency.

(6) The Federal Farm Loan Board consists of four appointive members, while the Secretary of the Treasury is *ex officio* chairman. This board administers the federal land bank system established in 1916 to aid the farmer by making farm loans. The entire United States is divided into twelve land bank districts, in each of which a federal land bank is located. These banks may authorize loans to farmers at a rate not to exceed six per cent for the purchase of land or for its improvement, or for the purchase of live stock or the erection of buildings.

(7) The Federal Board for Vocational Education was created under the Smith-Hughes Act of 1917. It consists of seven members: the Secretary of Agriculture, the Secretary of Labor, the Secretary of Commerce, and the Commissioner of Education; also three appointive members representing, respectively, labor, agricultural, and manufacturing interests. The duty of this board is to promote vocational education in coöperation with the States, and to administer the federal aid granted to the States under the Smith-Hughes Act (*see pages 183-184*).

(8) The United States Board of Mediation and Conciliation, created by the act of 1913, consists of a commissioner and an assistant commissioner, aided by not more than two other members. At the request of the parties thereto, this board undertakes to settle industrial disputes by mediation, conciliation, or arbitration.

(9) The United States Railroad Labor Board, created under the Transportation Act of 1920, consists of nine

members appointed by the President. Three of these members are chosen from the labor group, representing the employees of the carriers, three are from the management group, representing the carriers, and three are from the public group, representing the public. This board has power to hear and decide disputes involving wages and working conditions upon application either of the carriers or their employees. Or the Labor Board may investigate and decide any dispute likely to interrupt interstate commerce, without awaiting a request for adjustment. Its decisions are made a matter of record, and are communicated to the parties to the dispute, to the public, to the Interstate Commerce Commission, and to the President.

Railroad
Labor
Board

(10) Besides the foregoing boards and commissions, several important national institutions are administered independently of the regular executive departments. These include the Smithsonian Institute, the Pan-American Union, the Government Printing Office, the Library of Congress, and others.

Miscella-
neous

399. War Boards and Commissions. When the United States took up arms in 1917 to resist Germany's aggressions, American industry, no less than the army and navy, had to be reorganized to meet the immense demands made upon it for guns, ammunition, airplanes, uniforms, and above all else, for ships and food supplies. Hence several new boards and commissions were created to carry on the work so vital to our success in the war.

(1) The United States Shipping Board consists of five members appointed by the President with the consent of the Senate. This board is authorized to charter, lease, or construct vessels suitable for use as naval auxiliaries in time of war. It regulates carriers by water engaged in interstate and foreign commerce, reports to Congress the means of encouraging American shipping, and may organize one or more corporations.

United
States
Shipping
Board

for the lease, charter, or sale of vessels authorized to be constructed under the Shipping Act.

(2) The United States Shipping Board Emergency Fleet Corporation was incorporated April 16, 1917, under the ~~Emergency Fleet Corporation~~ authority conferred by the Shipping Act. This organization had active charge of the task of building the immense merchant marine necessary to transport our troops and supplies to Europe.

(3) The Aircraft Board, consisting of nine members, had ~~Aircraft Board~~ charge of aircraft production and in general of the development of this important branch of modern warfare.

(4) The Council of National Defense consisted of six cabinet officers, the Secretaries of War, Navy, Interior, Agriculture, Commerce, and Labor; together with seven advisory members. This body was created to coördinate all the military, industrial, and commercial resources of the nation in order that these might be made fully available for the successful prosecution of the war.

(5) The War Trade Board was created by executive order to enforce rules and regulations concerning our import and export trade during the war.

(6) The United States Food Administration was authorized by an act of Congress in 1917. Under the authority conferred by this measure, President Wilson appointed Herbert Hoover as National Food Administrator.

(7) The United States Fuel Administration was created to take charge of the country's supply of fuel during the war. Harry A. Garfield was appointed by the President to serve as Fuel Administrator.

(8) The Office of Director General of Railroads was created in 1917 when President Wilson, acting under authority conferred by Congress, took over the railroads of the country for the period of the war.



(By courtesy of Foster and Reynolds)

THE STATE, WAR, AND NAVY DEPARTMENTS



SUPREME COURT CHAMBER

UNIV
1906
1915

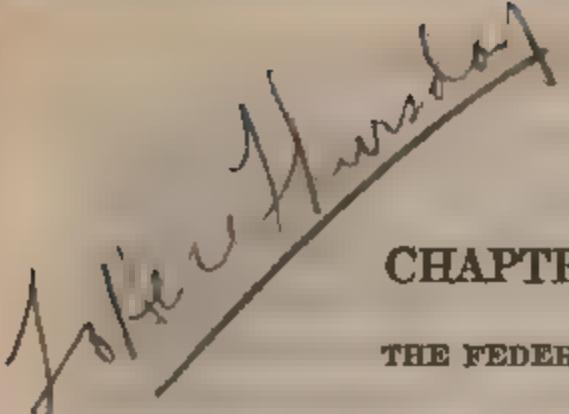
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QUESTIONS AND EXERCISES

1. What is the meaning of "department" as the term is used in the constitution? Why is our cabinet said to be extra-constitutional?
2. How are cabinet officers appointed and confirmed? How may they be removed?
3. Could Congress require the President to consult and follow the judgment of his cabinet?
4. Could Congress by statute give seats in either house to cabinet officers? What would be the advantages of this plan?
5. Discuss the relations between the departments and the congressional committees. (McConachie, L. G., *Congressional Committees*, p. 221.)
6. Discuss the advantages of the British cabinet system.
7. Name the members of our present cabinet. Which States are represented? Describe the previous public service of its members.
8. Consult the Congressional Directory and other sources, and prepare a short report upon the duties of the State Department.
9. Contrast the position of our Secretary of the Treasury with that of the finance minister of a European country. (Reinsch, P. S., *Readings on American Federal Government*, pp. 367-368.)
10. Prepare a brief report upon the fiscal business of the Treasury Department. (Congressional Directory; Reinsch, P. S., *Readings*, pp. 362-377.)
11. Prepare a report upon the miscellaneous business of the Treasury Department. (Congressional Directory; Reinsch, P. S., *Readings*, pp. 363-364.)
12. Describe the work of the secret-service bureau. (Wilkie, John E., in *History-Making*, pp. 21-28.)
13. Report upon the work of the bureau of the mint. (Leach, Frank A., in *History-Making*, pp. 188-197.)
14. Report upon the functions of the several bureaus of the War Department. (Congressional Directory.)

15. Compare the position of Attorney-General with that of your State's attorney; also with that of the prosecuting attorney of your county, and of your city solicitor.
16. Prepare a report upon the functions of the Department of Justice. (*Congressional Directory*; also, Bonaparte, Charles J., in *History-Making*, pp. 35-39; Reinsch, P. S., *Readings*, pp. 377-381.)
17. Cite facts which tend to prove that our post office is the largest business enterprise in the world.
18. Give arguments for and against government ownership of railways and telegraph lines.
19. Prepare a report upon the duties of the Navy Department. (*Congressional Directory*; also Newberry, J. H., in *History-Making*, pp. 58-66.)
20. Report upon the work of the general land office. (*Congressional Directory*; also Dennett, Fred, in *History-Making*, pp. 40-43.)
21. Describe the work of the reclamation service. (Newell, E. H., in *History-Making*, pp. 188-190.)
22. Describe the work of the weather bureau. (Moore, W. L., in *History-Making*, pp. 149-154.)
23. In what ways does the federal government promote agriculture?
24. Prepare a report upon the scientific work of the federal government. (*History-Making*, pp. 29, 83, 98, 149, 183, 188; Reinsch, P. S., *Readings*, pp. 419-432.)
25. Describe the purpose and work of the bureau of corporations. (Reinsch, P. S., *Readings*, pp. 529-537.)
26. Prepare a report upon the Congressional Library. (Putnam, Herbert, in *History-Making*, pp. 138-148.)
27. Discuss the work of the Civil Service Commission. (Kaye, P. L., *Readings in Civil Government*, pp. 232-242; Reinsch, P. S., *Readings*, pp. 683-702.)
28. Describe the work of the census bureau.
29. Readings on the executive departments: Kaye, P. L., *Readings*, pp. 211-225; Reinsch, P. S., *Readings*, pp. 362-400; Beard, C. A., *Readings*, ch. IX.



CHAPTER XXVIII

THE FEDERAL JUDICIARY

400. Necessity of a Federal Judiciary. Under the Articles of Confederation there was no provision for a federal judiciary. Hence the laws and treaties of Congress were not addressed to individuals as commands, for violation of which the courts would enforce a penalty; but were merely requests or recommendations addressed to sovereign States. With the establishment of a new government possessing the attributes of nationality and empowered to pass laws operating directly upon individuals, a national judiciary was essential in order to interpret and apply those laws, and to enforce a penalty for their violation. The creation of the federal judiciary as an independent and coordinate department of the government,¹ with final power to decide as to the interpretation and constitutionality of legislative and executive acts, was the unique and crowning achievement of the Constitutional Convention of 1787.

401. The National Courts. The constitution vests the judicial power of the United States in one Supreme Court, and in such inferior courts as Congress may see fit Judiciary Act of 1789 to establish. In accordance with this provision, Congress in 1789 passed the Judiciary Act drafted by Oliver Ellsworth, which with modifications still forms the basis of our judicial system. This act organized the Supreme Court, and also created circuit and district courts; it apportioned the federal jurisdiction among the three grades of courts; created the office of Attorney-General, and provided for a marshal in each judicial district.

¹ "The judicial department is ultimately dependent on the executive department to enforce its judgments if resisted, and upon the legislative department for the appropriation of the funds necessary to enable it to continue in existence and discharge its functions." McClain, E., *Constitutional Law in the United States*, pp. 219-220.

Three grades of courts In 1891 Congress created nine "circuit courts of appeals" in order to relieve the Supreme Court of part of its former appellate jurisdiction. By an act which became effective January 1, 1912, Congress abolished the circuit court, vesting its former powers and duties in the district court. Hence there are now three grades of federal courts — the Supreme Court, the circuit court of appeals, and the district court.

Number, appointment, term 402. **Federal Judges.** The number of federal judges is as follows: Supreme Court justices, nine; circuit judges, thirty-two; district judges, one hundred and five. All United States judges are appointed by the President, subject to confirmation by the Senate; and their term of office is for life, or during good behavior. Federal judges are thus made independent both of the appointing power and of the popular will, since they can be removed from office only by conviction on impeachment charges.

Judges receive a compensation which may be increased but cannot be diminished during their continuance in office.

Compensation The justices of the Supreme Court are paid \$14,500 a year (the chief justice receiving an additional \$500); circuit judges, \$8500; and district judges, \$7500. Any judge who has held his commission at least ten years may resign on attaining the age of seventy years, and continue to draw full salary during the remainder of his life.

403. **Jurisdiction of the Federal Courts.** The federal courts authorized by the constitution are courts of limited, ~~not of general~~, jurisdiction; that is, they have ~~jurisdiction~~ authority to try only such cases as are specifically placed within their jurisdiction by the provisions of the federal constitution and the laws enacted by Congress. The nine classes of cases enumerated in the constitution may be grouped under two general heads: (1) cases in which the federal jurisdiction depends upon the character of the

suit; (2) cases in which the federal jurisdiction depends upon the character of the parties.

404. Jurisdiction depending upon Character of Suit. The class of cases in which jurisdiction depends upon the character of the suit includes: (a) cases in law or equity arising under the constitution or laws of the United States, or treaties made under their authority. (b) Cases of admiralty and maritime jurisdiction. (c) Controversies between citizens of the same State claiming lands under grants of different States.

The most important cases within this group are those arising under the federal constitution, laws, or treaties; for it is by virtue of this authority that the national courts are enabled to maintain and enforce the provisions of the federal constitution, as well as the laws and treaties made under its authority. In order to come within the federal jurisdiction, it must appear that some right, title, privilege, or immunity claimed by one of the parties involves a construction of the federal constitution, laws, or treaties. Thus, if one of the parties claims that a State law affecting his rights is a law which impairs the obligation of contracts, the case is within federal jurisdiction, since it involves the construction of the federal constitution.¹ Or if one holding a patent from the federal government desires to bring suit for infringement, this would be a case arising under the laws of the United States, since patents are granted only by federal law. Again, if a municipality should pass an ordinance requiring all Chinese inhabitants to remove to a certain quarter of the city, the aliens concerned could seek redress in the federal courts, since the case would be one arising under a treaty.²

The judicial power of the United States also extends "to

¹ Article I, Section 10 of the constitution provides that no State shall pass any law impairing the obligation of contracts.

² The Burlingame treaty with China guaranteed to Chinese subjects the same privileges in respect to residence as are enjoyed by the citizens or subjects of the most favored nation. *Su vs Lee Sing, et al.*, 43 Fed. Rep. 359; Thayer's Cases, 1, 861.

all cases of admiralty and maritime jurisdiction." Since ~~Maritime jurisdiction~~ the high seas are the joint property of the nations, the determination of maritime rights or transactions on such waters is necessarily beyond the jurisdiction of the State courts. As now construed, the admiralty jurisdiction of the federal courts extends not only over the high seas, but over all of the navigable waters of the United States which constitute avenues for foreign or interstate commerce.

Likewise reserved for federal decision are controversies between citizens of the same State claiming lands under ~~Land-grant cases~~ grants of different States. As the rights of the two States to grant the lands are drawn into question, it is clear that the courts of neither State should decide the controversy.

405. Jurisdiction depending upon Character of Parties. The second group of cases, wherein federal jurisdiction depends upon the character of the parties, includes: ~~Enumeration of cases~~ (a) cases affecting ambassadors, other public ministers, and consuls. (b) Controversies to which the United States is a party.¹ (c) Controversies between two or more States. (d) Controversies between a State and citizens of another State.² (e) Controversies between citizens of different States. (f) Controversies between a State, or the citizens thereof, and foreign States, citizens, or subjects. It is apparent that this group of cases includes those controversies whose determination by a federal tribunal is necessary to secure harmonious foreign and interstate relations, or to secure an impartial decision concerning the rights of citizens of the several States.

406. The Federal Judicial System. As already stated,

¹ This includes all federal criminal suits, also suits by the United States against individuals for debt, for the non-fulfillment of contracts, or for wrongful possession of property.

² Shortly after the decision in the case of *Chisholm v. Georgia* (1793), the eleventh amendment was added to the constitution. This provides in effect that a State cannot be sued in a federal court by citizens of another State, or by citizens of a foreign state. Hence while States may bring suits in federal courts against citizens of other States, they cannot themselves be sued by individuals in the national courts.

the judicial power of the United States is vested in a system of courts of three grades: the district courts, ^{Three grades of courts} circuit courts of appeals, and the Supreme Court.

The Supreme Court is expressly provided for by the constitution, and is therefore largely independent of Congress. The courts of the other two grades are statutory courts; that is, they are created by Congress, which body may alter their jurisdiction or abolish them entirely, at its discretion.

407. Federal District Courts. The federal courts of lowest grade are the district courts, one of which exists in each of the eighty-one districts into which the forty-eight States are divided. No district includes more than one ^{Lowest fed-}
^{eral court} State, but many States are divided into two or more districts. Each district ordinarily has its own district judge, who holds court at one or more places within the district.

The district court is a court of general original jurisdiction, both civil and criminal; that is, it is the court in which all cases coming under federal jurisdiction are ^{Jurisdiction} begun and first tried (except those cases in which the Supreme Court has original jurisdiction). The district court has jurisdiction of: (1) all crimes and offenses cognizable under the authority of the United States; (2) all civil cases brought by the United States or one of its officers; (3) cases between citizens of the same State claiming lands under grants from different States; (4) cases arising under the federal constitution, laws, or treaties, provided the amount in controversy exceeds \$3000;¹ (5) controversies between citizens of different States, or between citizens of a State and foreign states, citizens, or subjects, provided the amount involved exceeds \$3000; (6) admiralty and maritime cases; (7) suits arising under the patent, copyright, and trade-mark laws; (8) cases arising under the internal revenue, customs,² and postal laws; (9) suits arising under

¹ If the amount is less than \$3000 the action must be brought in the State courts.

² Except where jurisdiction has been conferred upon the Court of Customs Appeals.

the laws regulating commerce; (10) suits against consuls and vice-consuls; (11) proceedings in bankruptcy; (12) suits under the immigration and contract labor laws; (13) suits and proceedings arising under the law to protect trade and commerce against restraints and monopolies; (14) suits to enforce the rights of citizens of the United States to vote in the several States; (15) suits brought by any person to redress the deprivation of any right, privilege, or immunity secured by the federal constitution or laws.

Generally speaking, cases which have been brought in ^{Removal} the State courts and could have been brought originally in the federal district court may be removed by the defendant under certain restrictions from the State court to the federal district court.

408. Federal Circuit Courts of Appeals. In order to relieve the work of the Supreme Court, the court known as <sup>Establish-
ment</sup> the circuit court of appeals was established in 1891 in each of the nine circuits. This court consists of three judges (two of whom constitute a quorum) selected from the following list: the Supreme Court justice assigned to the particular circuit, the circuit judges, and the district judges of the circuit.

The circuit court of appeals has appellate jurisdiction to review the decisions of the district courts, except in cases ^{Jurisdiction} in which appeals and writs of error may be taken direct to the Supreme Court. The judgments and decrees of the circuit court of appeals are generally final in cases where the jurisdiction results from the fact that the suit is one between a citizen and an alien, or between citizens of different States. This court also has final jurisdiction in cases arising under the patent and copyright laws, the revenue laws, the criminal laws, and in admiralty

409. The Federal Supreme Court. The Supreme Court consists of one chief justice and eight associate justices, six of whom constitute a quorum. This court sits at the

national capital, its sessions being held annually, commencing on the second Monday in October. After a case has been tried before the court, the opinion of a majority of the judges is ascertained, and the chief justice then assigns to one of his associates the task of writing the decision. This is then read before the others, and if accepted by a majority it becomes the decision of the court.

Organization
and
procedure

The jurisdiction of the Supreme Court is of two kinds, original and appellate. Its original jurisdiction, being prescribed by constitutional provision, cannot be abridged or extended by statute. The Supreme Court has original jurisdiction (1) in all cases affecting ambassadors, other public ministers, and consuls; (2) in cases in which a State is a party. The original jurisdiction of the Supreme Court has been resorted to principally to settle controversies between the States.

The appellate jurisdiction of the Supreme Court is subject to the control of Congress, and may be enlarged or restricted by that body. The Supreme Court now hears appeals from the inferior federal courts as follows: (1) Cases from the district court in which the jurisdiction of the court is in question; final decrees in prize cases; cases involving the construction or application of the constitution of the United States, or of a federal law or treaty; cases in which the constitution or law of a State is claimed to be in contravention of the constitution of the United States. (2) Certain cases may be certified to the Supreme Court by the circuit court of appeals, or removed from that court by direction of the Supreme Court. (3) In certain cases the Supreme Court hears appeals from the supreme courts of the territories, the supreme court of the District of Columbia, and from the Court of Claims.

(4) Finally, the Supreme Court has power to hear appeals from State courts of last resort in cases involving a

federal question, where the decision of the State court is against the validity of a federal statute or treaty or authority exercised under the United States; or where the decision of the State court is against the title, right, privilege, or immunity claimed by either party under the constitution, laws, treaties, or authority of the United States; or where the decision of the State court is in favor of a State statute or constitutional provision which is claimed to be repugnant to the federal constitution, laws, or treaties.

~~410.~~ Special United States Courts. The three courts described above constitute the national judicial system, and exercise the judicial powers prescribed in the federal constitution. But in the exercise of its own authority, Congress has created several special tribunals. One of these is the Court of Claims (created in 1855), composed of five justices who sit at Washington. This court has authority to try claims against the United States, and if its judgment is in favor of the claimant, the sum may be paid by the Secretary of the Treasury from an appropriation made by Congress for this purpose.¹

By the act of 1911, Congress created the Court of Customs Appeals. This court consists of five judges who have power to review the decisions of the Board of General Appraisers² concerning the classification of imports and the rates of duty thereon.

In the exercise of its general power to legislate for the territories and the District of Columbia, Congress has provided a system of territorial courts. Under authority derived by treaty with certain nations, as Turkey and China, Congress has given jurisdiction to United States consuls in those countries to try civil and criminal cases to which citizens of the

¹ The award of the court is in the nature of a recommendation only, and if Congress makes no appropriation the claimant is without remedy.

² The Board of General Appraisers is the board to which appeal is made from any decision of the customs officers in assessing duties upon imports.

United States are parties. Finally, under the power to "make rules for the government and regulation of the land and naval forces," Congress has provided courts-martial for the punishment of military and naval offenses.

411. Exercise of Federal Judicial Power. The federal courts possess all the powers belonging to courts of record, and necessary to the exercise of their jurisdiction and the satisfaction of their judgments. They appoint their inferior officers, admit and disbar attorneys, punish for contempts, make rules of practice, and issue all customary writs, the most important of which are writs of *habeas corpus*, *mandamus*, and *injunction*.¹

In each judicial district there is a United States marshal, charged with the duty of enforcing the decrees and orders of the court. Like the sheriff, he may if resisted call a posse of citizens to his aid; or if this is not adequate, he may appeal to the President for federal troops. There is also in each district a federal public prosecutor, the United States district attorney, who institutes proceedings against persons who violate federal law. Marshals and district attorneys are under the direction of the United States Attorney-General, as head of the Department of Justice.

In exercising their jurisdiction, the courts have consistently adhered to the rule that they will not interfere in purely political questions, decision concerning which belongs to the executive or legislative departments. Such, for example, are questions of the existence of war or peace, the rightful government of a foreign state, the admission of a new State to the Union, the restoration to constitutional relations of a State lately in rebellion, or the right of Indians to recognition as a tribe.

¹ The writ of *habeas corpus* is frequently invoked before federal courts in order to test the legality of an arrest under State authority. The writ of *mandamus* may be directed against individuals or corporations to compel them to perform their duties. The writ of *injunction* takes many forms, and is either a temporary or permanent restraining order forbidding persons to perform acts which would create consequences that could not be remedied by later suits.

Similarly, the courts have uniformly refused to decide abstract questions of constitutionality, or to give opinions upon questions not presented in the form of a concrete case between parties to a suit.

412. The Law administered in the Federal Courts. In the exercise of their jurisdiction, the federal courts may find it necessary to interpret and administer the federal law, as expressed in the federal constitution, statutes, or treaties; or State law, as expressed in the State constitution or statutes, or as embodied in the common law of the State. These laws are of different degrees of authority, the supreme law being the federal constitution, the provisions of which prevail over any other enactments, since whatever is not in accordance with the federal constitution is not law at all. A federal statute or treaty, if in conformity with the federal constitution, prevails as against any State constitution or statute. The State constitution is of higher authority than the State statute, while the State statutes prevail as against any principles of the common law which they contravene.¹

When cases arise which involve the construction of the United States constitution, laws, or treaties, the federal courts follow their own judgment, guided by previous decisions of the United States Supreme Court. However, many cases arise which involve only the application of general principles of law, or the construction of State constitutions and statutes. In such cases, the general rule is that in administering the local or State law, the federal courts will follow the settled decisions of the highest State court.

413. Declaring Legislative Acts Void. Federal courts, like those of the States, exercise a twofold function. In common with the courts of all countries, they have the power of determining the meaning of a legislative enactment involved in any case before the

¹ See Section 150.

court, and applying the law, when its meaning has been ascertained, to the particular case. But American courts have a second function which foreign judiciaries do not possess; for they have the power to decide whether the legislative enactment involved in the case before the court is one which the legislature is warranted under the constitution in passing — in short, whether the particular enactment is law at all.

The federal constitution, we have seen, is the supreme law of the land, and Congress has only such legislative power as the constitution confers. It is the function of the judiciary to decide whether legislative or executive acts involved in cases before the court are in excess of the authority granted; for if so, they are null and void. This power likewise extends to acts of the State legislatures and provisions of the State constitutions, which, to be valid, must not conflict with any provision of federal law.

Final interpreter of
the constitution

414. Historical Decisions. In the case of *Marbury v. Madison*, decided in 1803, the doctrine was first explicitly asserted that an act of Congress repugnant to the *Marbury v. Madison* federal constitution was void; and from that date the position of the United States Supreme Court as the final and authoritative interpreter of the constitution was assured.

In *United States v. Judge Peters* (1809), in *Martin v. Hunter's Lessee* (1816), *McCulloch v. Maryland* (1819), and in *Cohen v. Virginia* (1821), the Supreme Court asserted its power to disallow acts of the *other important cases* State legislature which were repugnant to the federal constitution.¹ Since these cases, scores of State statutes and many provisions of State constitutions have been set aside as void because of conflict with the federal consti-

¹ Perhaps the most noted decision setting aside an act of a State legislature was the Dartmouth College Case, decided in 1819. This case declared void an act of the New Hampshire legislature on the ground that it impaired the obligation of a contract, thus contravening Section 10 of Article 1 of the federal constitution, forbidding the States to pass any law impairing the obligation of contracts. 4 Wheaton, §18; Thayer's Cases, II, 1584.

tution. The most famous decision disallowing an act of Congress was probably the Dred Scott Case, decided in 1857, denying the power of Congress to prohibit slavery in the territories. Other notable decisions of the Supreme Court setting aside acts of Congress are: the first Legal-Tender Decision (1870), disallowing the Legal-Tender Act;¹ the Civil-Rights Cases (1883-84), in which acts designed to protect negro citizens were disallowed; the Trade-Mark Cases (1879), in which the general power of the national government to register trade-marks was denied; and the Income-Tax Cases (1895), in which, by a majority of one, the federal tax on incomes was declared unconstitutional.

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¹ The adverse decision in this case was rendered by four judges to three, and was reversed the following year by five judges to four. *The Legal-Tender Cases*, 12 Wallace, 457, 529.

QUESTIONS AND EXERCISES

1. What territory is included in your federal judicial district? Where is the court held? Name the district judge, the district attorney, and the marshal. For what term and by whom is each appointed?
2. What States are included in your judicial circuit? Who is the Supreme Court justice for this circuit? Who are the circuit judges?
3. Name the justices of our present Supreme Court. Name the men who have held the position of chief justice. Which ones are most famous?
4. Prepare a report upon the influence of John Marshall as chief justice.
5. May Congress by statute abolish the Supreme Court? Increase or decrease the number of Supreme Court judges?
6. Compare the method of appointment and term of federal judges with that of the judges of your State supreme court.
7. What are the advantages of life tenure for judges? (Kaye, P. L., *Readings in Civil Government*, pp. 247-250.)
8. Describe the process by which the United States Supreme Court renders a decision. By whom is the decision written, by whom reported, and where published? (Reinisch, P. S., *Readings*, pp. 710-717.)
9. May the President require the opinion of the Supreme Court upon a legislative measure? Whom should be consult?
10. How are the judgments of the Supreme Court carried out? If the President should refuse to execute them, is there a remedy?
11. Is the Supreme Court bound by its own previous decisions?
12. What is the effect of a decision of the United States Supreme Court upon persons not parties to the suit?
13. How is the jurisdiction of the federal courts determined?
14. What was the constitutional result of the eleventh amendment? May a State sue another State in the federal courts for the payment of bonds?
15. State the conditions under which a case may be appealed from the supreme court of your State to the United States Supreme Court.
16. Prepare a report showing how the federal courts protect the rights: (a) of the nation; (b) of the States; (c) of citizens.
17. Report upon the use of each of the following judicial writs: *habeas corpus, injunction, mandamus*.
18. Describe the power, process, and effect of declaring legislative acts unconstitutional. (*Marbury v. Madison*, 1 Cranch, 137; Thayer's Cases, I, 107; McClain, E., *Constitutional Law in the United States*, pp. 19-25.)
19. May a State court declare a federal law unconstitutional?
20. Assuming that there is a conflict between the following laws, state which one prevails: (a) a city ordinance and a State statute; (b) a city charter and a State constitution; (c) a State constitution and a law of Congress; (d) a State statute and a law of Congress; (e) a State constitution and the federal constitution; (f) a law of Congress and a treaty; (g) a law of Congress and the federal constitution (Section 180).
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CHAPTER XXIX

EXPENDITURE AND REVENUE

J. H. Hartford

415. Growth of Federal Expenditures. The total expenditures of the national government for the year ending June 30, 1919, exceeded fifteen billion dollars, the objects of expenditure being shown in the table below. In 1860, the total federal expenditures amounted to \$63,200,000, or two dollars *per capita*, while in 1919 our annual expenditures were one hundred and forty-six dollars *per capita*. Thus the total volume of expenditure is now two hundred and forty times as large as it was fifty years ago, while the *per capita* expenditure is more than seventy times as large. It must be kept in mind that governments to-day perform many more services than formerly, and expenditures have grown larger as government activities have increased. Moreover, while the *per capita* expenditure has increased, wealth has also greatly increased, especially in the United States; and hence the increased expenditure does not necessarily mean a greater burden to the individual taxpayer.

FEDERAL RECEIPTS AND EXPENDITURES, YEAR ENDING JUNE 30, 1919

(In millions of dollars)

<i>Ordinary receipts</i>		<i>Ordinary disbursements</i>	
Customs	183	Civil and miscellaneous . . .	3,264
Internal revenue: —		War	9,220
Income and profits tax	2,601	Navy	2,000
Miscellaneous	1,239	Indians	85
Miscellaneous revenue	625	Pension	222
Net postal revenue	2	Interest on public debt . . .	616
Total	4,850	Total	15,386

416. Expenditures resulting from the World War. When the United States entered the World War in defense of our national rights, the volume of federal expenditures increased enormously. The total appropriations of the Sixty-fifth

Congress at its first session were nearly seventeen billion dollars, while previous appropriations and contracts authorized made a grand total for the fiscal year 1918 of over twenty-one billion dollars. This amount included seven billions for loans to our allies; so that exclusive of these loans, the total appropriations for this year exceeded fourteen billion dollars.

417. Control of Federal Expenditures. Control of federal expenditures is vested in Congress under the constitutional provision that no money shall be drawn from the treasury except in consequence of an appropriation made by law.¹ The power of Congress over appropriations is subject to the executive veto, but the President cannot veto particular items of an appropriation bill. Most of the expenditures of the federal government are provided for in annual appropriation bills passed by Congress. In some cases, as for rivers and harbors and for public works, it is necessary to make permanent appropriations; that is, appropriations voted for a certain purpose without limitation as to time.

The constitution requires that "a regular statement and account of the receipts and expenditures of all public moneys shall be made from time to time."² In accordance with this provision, the Secretary of the Treasury lays before Congress at the beginning of each regular session a report known as the "Book of Estimates," giving: (1) a condensed statement of receipts and expenditures for the last fiscal year; (2) an estimate of the revenues and expenditures for the fiscal year about to be entered upon; (3) an outline of the fiscal policy desired by the administration. The Secretary's report is submitted to the Speaker of the House, who refers it to the appropriate committees.

Real control of financial policy is thus vested in the congressional committees; for while they may take the report of the Secretary of the Treasury as a

¹ Constitution, Art. 1, Sec. 9, Par. 7.

² Constitution, Art. 1, Sec. 9, Par. 7.

basis for legislation, they are under no legal obligation to do so, and the recommendations of that official are often materially modified or even entirely rejected. The most important of the House committees is that on ways and means, which has almost exclusive control of plans for raising revenue. Only second in importance to the ways and means committee is the committee on appropriations. Formerly this committee reported all appropriation bills, but at present it reports only six bills, namely, the sundry civil bill; the legislative, executive, and judicial bill; the District of Columbia, pension, fortifications, and deficiency bills. Each of the other appropriation bills is assigned to a standing committee, so that the fourteen appropriation bills are reported by eight different committees.¹

Bills thus prepared are submitted to the House, and if passed by that body go to the Senate, where bills for raising revenue are referred to the finance committee, and appropriation bills to the committee on appropriations. Both revenue and appropriation bills are freely amended by the Senate; and conference committees are often necessary to adjust the differences between the two bodies. After passing Congress, financial measures, like all other bills, must be submitted to the President for his approval or veto.

418. Criticisms of Federal System of Finance. Our system of public finance has been severely criticized by Bryce and other authorities, for the following reasons:—

(1) Responsibility for preparing the budget ought to be direct, personal, and complete; but under our practice, this responsibility is dispersed among independent committees of coördinate authority. The fourteen annual appropriation bills enacted by Con-

¹ Thus the committee on foreign affairs has charge of the appropriation bill for the consular and diplomatic service, committee on military affairs, of the bills for the army and the Military Academy, committee on naval affairs, bill for the naval service, committee on Indian affairs, bill for the Indian service, committee on post office and post roads, bill for the postal service; committee on agriculture, bill for the Department of Agriculture, committee on rivers and harbors, the rivers and harbors bill.

gress are prepared by eight different House committees, each of which is independent of the rest, and all of which may ignore entirely the ways and means committee, whose business it is to raise the revenue, as well as the Secretary of the Treasury, whose duty it is to suggest a fiscal plan.

(2) There is no direct relation between the amount proposed to be raised and the amount proposed to be spent in any one year. In most foreign countries, as in the case of our own States and cities, the necessary expenditures are calculated beforehand as closely as possible, and taxes are then levied to supply the necessary funds. Federal finance reverses this process; it first provides revenue without any special reference to the needs of the country, and then considers ways of expending the money raised.

(3) The executive branch of the government has insufficient authority in financial affairs. The Secretary of the Treasury, unlike the British Chancellor of the Exchequer, does not submit his financial projects in the form of bills which he defends on the floor of the House; he may only recommend measures for the secret consideration of committees. Moreover, since the President cannot veto particular items in appropriation bills, his authority over fiscal legislation is limited.

419. Proposals for a National Budget System. War expenditures running into the billions of dollars, coupled with the certainty that direct taxation must continue to be the main source of federal revenue after the war, led Congress to consider seriously the institution of a budget system of appropriation. A bill was introduced in each branch of the Sixty-fifth Congress, outlining the following principles for a budget system:—

(1) That the President should be made responsible for expenditures recommended by his department heads, and that he should collect these recommendations and pass on them as a total sum.

Expenditures and revenues not correlated

Lack of executive control

Administration budget proposed

(2) That requests for appropriations should be submitted to Congress in minute detail, and in the form of one administration budget.

(3) That this budget should be considered by a single committee in each house of Congress, instead of being introduced in a multitude of departmental bills to be considered by twenty-nine different committees.

(4) That Congress should create as an adjunct to its appropriations committee an auditing department that would comb the administration budget for extravagances.

The budget system was finally established by an act of Congress passed in 1921. This law creates the bureau of the budget as an adjunct of the Treasury Department. This bureau prepares for the President the annual budget, together with such estimates as he may from time to time recommend to Congress. The head of each executive depart-

Establishment
of the
budget
system

ment appoints a budget officer charged with the duty of preparing the departmental estimate of appropriations. On or before September 15 of each year, the head of each department revises these estimates and submits them to the bureau of the budget, which has authority to correlate, revise, reduce, or increase the estimates. When directed by the President, the budget bureau is authorized to make detailed studies of the several executive departments and establishments, so as to enable the President to know what changes are advisable in the interest of economy and efficiency. Each executive department must furnish the bureau with such information as it may require, and the officials of the bureau have authority to examine the books and records of any department.

420. Sources of Federal Revenue. The ordinary revenues of the federal government are derived mainly from two sources, customs duties and internal revenue taxes. For example, in 1917 customs duties supplied about twenty per cent of our national in-

Customs
and
internal
revenue

come, while internal revenue yielded over seventy per cent of the total. The internal revenue of that year was derived from three taxes: ordinary internal revenue, commonly called excise taxes; the corporation income tax; and the individual income tax.¹

421. Taxing Power of the National Government. The constitution delegates the taxing power to Congress in the following terms: "The Congress shall have power ^{Taxing} to lay and collect taxes, duties, imposts, and ^{power} excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."² The taxing power thus vested in Congress extends to all persons and property within the jurisdiction of the United States. The power may be exercised for any of three purposes — payment of debts, common defense, and general welfare — objects as broad as the needs of government can possibly be.

The power of Congress to tax is subject to four important limitations, two of which restrict the objects to ^{Limitations} be taxed, while two apply to the method of levying taxes. These are as follows: —

(1) No tax or duty may be levied on articles ^{Export} ^{duties} exported from any State.³

(2) Congress may not lay a tax upon the agencies or instrumentalities through which the State governments perform their functions. Thus Congress ^{Govern-} ^{mental} ^{agencies} cannot tax State property, or incomes from State securities, or the salary of a State judicial officer, or the property or revenues of municipalities.

(3) Direct taxes must be apportioned among the several States in accordance with their population.⁴ ^{Direct taxes} "Thus, if Congress proposes to lay a direct tax, it must first fix the whole amount of money to be raised in

¹ See table in Section 415.

² *Ibid.*, Art. I, Sec. 9, Par. 3.

³ Constitution, Art. I, Sec. 8.

⁴ Constitution, Art. I, Sec. 9, Par. 4.

this manner; and this amount it must divide among all the States in sums proportioned to the number of inhabitants in each. That is to say, the same process must be gone through with which is adopted in ascertaining the number of Representatives to which each State is entitled.”¹

(4) Finally, all duties, imposts, and excises must be uniform throughout the United States;² that is, the rate fixed upon any article must be the same in all the States. “It is not necessary that all articles should be subjected to the same burden, or that all upon which the tax is laid should bear the same rate. But when a rate has been determined for any one subject, that must be retained for the same species in all the States.”³

422. Import Duties as a Source of Revenue. Prior to the Civil War, the federal government derived nearly all its income from import duties;⁴ while in 1917 only twenty per cent of the net revenue was derived from this source. Import duties⁵ may be defined as taxes imposed upon articles brought into the United States from foreign countries. Since the States are forbidden to levy imposts, this form of tax is reserved exclusively to the federal government.

Import duties are of two kinds, specific and *ad valorem*. Specific duties are those which are laid according to weight or number, without reference to the value of the article; while *ad valorem* duties are those levied in proportion to value. On some articles both forms of duty are levied.⁶

¹ Pomeroy, J. N., *Constitutional Law*, sec. 270; but see also, *Constitution, Amendment 17*.

² *Constitution, Art. 1, Sec. 8, Par. 1.*

³ Pomeroy, J. N., *Constitutional Law*, sec. 280.

⁴ In 1860, for example, customs receipts amounted to \$53,178,812, while the total net revenues were only \$60,056,755.

⁵ Customs duties include both import and export duties, but taxes upon exports have been abandoned by all leading countries, and are prohibited by the federal constitution.

⁶ The great advantage of the *specific* duty is the ease with which it is administered, since it merely involves weighing or counting. The *ad valorem* duty is fairer in that the duty is proportioned to the value of the article and decreases if the value falls; on the other hand, the *ad valorem* duty demands more administrative machinery and often leads to fraudulent invoices.

The administration of customs duties is in charge of the Secretary of the Treasury, one of the assistant secretaries having immediate charge of the customs department. The entire country is divided into about fifty districts for the collection of customs. In each district there is a collector, who is aided by a surveyor, appraiser, and a staff of clerks, examiners, inspectors, and storekeepers.¹

Collection

423. Import Duties as a Form of Tax. The advantages of import duties as a form of tax are, that they are exceedingly productive, inexpensive to administer, and collected with comparative ease (being ordinarily paid by the importer and shifted to the consumer in the form of a higher price).

Advantages

Considered strictly as a tax, they are open to serious objections:—

(1) They are not proportioned to the wealth of the taxpayers, but impose a disproportionate burden upon persons of moderate income. To yield a large revenue, import duties must be laid upon articles of general consumption; but for these commodities persons of moderate means spend a greater proportion of their incomes than do the wealthier classes.

Disadvan-
tages — in-
equality of
burdens

(2) Customs revenues are inelastic, since duties cannot be readily changed to meet the changing needs of government. Frequent revision of tariff rates means injury to business, and for this reason the federal government for many years collected duties far in excess of its needs, thus encouraging wasteful expenditures.

Lack of
elasticity

(3) Import duties are an uncertain form of tax, likely to yield least when the government need is greatest. In time of war, for example, foreign trade is usually curtailed, and hence the revenues from duties decrease. Again, in time of industrial depression the receipts from this source generally decrease to a marked extent.

Uncertainty

¹ Nine-tenths of the entire imports come through six ports of entry — New York, Boston, Philadelphia, Baltimore, New Orleans, and San Francisco.

424. General Characteristics of Excise Taxes. Excises may be defined as taxes levied upon the consumption, manufacture, or sale of commodities within a country.¹ Like customs duties, excises are commonly borne by the consumers, who have to pay higher prices for the articles taxed. While somewhat inelastic and uncertain in character, they form a more stable and readily adjusted source of income than customs duties. Like the latter, they are based upon no rule of apportionment or equality, but are fixed charges laid on commodities without regard to the amount of property belonging to those who pay them.

425. History of Excise Taxation. Excise taxes were first imposed in 1791, when a tax was laid upon distilled spirits ^{Excises,} to obtain money with which to pay the Revolu-
~~1794-1817~~¹⁷⁹⁴⁻¹⁸¹⁷ tionary debt.² Other excises were levied in 1794, including taxes on carriages, on the sales of liquors, on auction sales, on the manufacture of snuff, and the refining of sugar. These early excises were exceedingly unpopular and were repealed in 1802. The War of 1812 led to the imposition of new excises, which were declared to be temporary war taxes, and were abolished after 1817.

With the outbreak of the Civil War, it became necessary to resort to excises upon an unprecedented scale.³ In 1866, <sup>Excises
of the
Civil War</sup> the receipts from internal revenue were \$309,- 226,813; and the total internal revenue receipts for the four years from 1863 to 1866 amounted to \$666,072,950. After the war, most of the excises were repealed, but the excise duties on distilled and fermented liquors and tobacco were retained, and have since formed a permanent feature of our internal revenue system.

At the outbreak of the Spanish-American War (1898),

¹ The term "excises" also includes licenses to pursue certain trades or callings, and to deal in certain commodities.

² This tax in 1794 caused the insurrection in southwestern Pennsylvania, known as the "Whiskey Rebellion."

³ The act of July 1, 1862, imposed duties upon liquors, tobacco, carriages, yachts, and many other articles; upon auction sales, railroads, steamboats, banking institutions, and insurance companies, upon the salaries of federal officers, upon advertisements, incomes, and legacies, and upon many legal and commercial transactions.

a war revenue bill was passed. Nearly all the duties on tobacco and fermented liquor were doubled, and excises were levied upon many other articles; also upon a large number of commercial transactions involving the use of documents (such as bank checks, express and freight receipts, telegraph messages, and the like); together with a tax upon inheritances.¹

Spanish-American War

To raise the immense revenues necessary for national defense in the World War, Congress resorted to taxation on a large scale, besides borrowing immense sums through the sale of bonds and other securities.

War taxes
of 1917

The tax law passed on October 3, 1917, was planned to produce \$2,500,000,000 of revenue during the ensuing year. The most important items in point of size were the tax on excess business profits, the tax on incomes, and the taxes on liquors and tobacco. There were also taxes on theater tickets and club dues, on promissory notes, deeds, and mortgages, on freight and express shipments, on telegrams, motion pictures, automobiles and tires, together with an increase in postage rates.

426. Administration of Excise Taxes. The administration of excise taxes is supervised by the commissioner of internal revenue, who is one of the bureau chiefs of the Treasury Department. The entire country is divided into a large number of districts, in each of which is a collector responsible for the enforcement of the revenue laws in his district. Special officers are employed to detect attempted evasions of the law.

Excise taxes are collected in two ways: (1) By requiring the producer or seller of such commodities as cigars or oleomargarine to pay a license fee for the right to carry on his occupation, whereupon a certificate is issued, which must be exposed in his place of business.

Revenue districts

Collection
of excises

¹ During the Civil War the federal government had levied a tax on inheritances (1864). Under this law the rate was made progressive, from one to six per cent. The law of 1898 established a minimum rate of three-fourths per cent and a maximum rate of fifteen per cent, the rate varying according to the amount of the bequest and the degree of blood relationship. Under both laws, small estates were exempt.

(2) In addition to the license fee, each unit of the article is taxed by means of revenue stamps which must be pasted upon packages in such a way as to be necessarily broken when the package is opened.

427. Characteristics of Income Taxes. Income taxes are those levied in proportion to the income of the taxpayer.¹ Theoretically, this is one of the most just forms of tax, since it conforms more nearly to the ideal that taxes should be proportioned to the ability of the taxpayer; and income is conceded to be the best single indication of taxpaying ability. Moreover, the income tax cannot be easily shifted, but is generally borne by the persons on whom it is assessed. It is also an elastic form of tax, and can be readily adapted to revenue needs. It has proven very successful in other countries; but under our form of government it is not practicable for the States, since if one commonwealth levies an income tax, its wealthy citizens may escape it by acquiring a legal residence in a neighboring State. Hence incomes can be successfully taxed only under federal law; and the sixteenth constitutional amendment expressly authorizes Congress to tax incomes.

428. History of Federal Taxation of Incomes. Several income tax laws have been passed by Congress: the first in 1861-1865 as a war measure; the second in 1894 as a means of meeting a prospective deficit resulting from a lowering of import duties; and the third in 1913, the rates being afterwards increased to provide a considerable portion of the immense revenue necessary for national defense.

By a series of acts passed in 1861-1865, Congress levied a general income tax, the rate fixed in 1862 being three per cent on all incomes exceeding \$600 and less than \$10,000, and five per cent on incomes over \$10,000.² Assessments were made on the basis of written declarations by the taxpayers, subject to correction by the

¹ See Section 432.

² Later acts increased the rate to five per cent on incomes from \$600 to \$5000, and ten per cent on incomes above \$5000.

assessors. The income tax was abolished in 1872, having yielded a total revenue of \$347,000,000 during the ten years it was in force. This tax was deemed by Congress an indirect tax, and hence the rate was made uniform throughout the United States.

In 1894, to offset the prospective loss of revenue from the lower rates under the Wilson-Gorman Tariff Act, Congress enacted a second income-tax law. This ^{Income tax of 1894} levied a tax of two per cent on all incomes, from whatever source derived, in excess of \$4000. The constitutionality of this law was attacked in the case of *Pollock v. Farmers' Loan and Trust Company*.¹ In an opinion rendered by a divided bench, the Supreme Court declared the law unconstitutional (1895). The grounds for this decision were: (1) that a tax upon the income of real or personal property is a direct tax within the meaning of the constitution, and therefore unconstitutional unless imposed by the rule of apportionment; (2) that a tax upon income from State and municipal bonds is unconstitutional, this being a tax upon the instrumentalities of the State governments.

This decision made it practically impossible for the federal government to tax incomes. Accordingly the Sixteenth Amendment was added to the Federal Constitution in 1913. This expressly empowers Congress ^{Income tax of 1913} to tax incomes "without apportionment among the several States, and without regard to any census or enumeration." Congress has since passed three income tax laws. The present law levies an annual tax of not less than two per cent upon the net income of married persons in excess of \$2000; while for single persons the amount exempt is only \$1000. The rate of the tax increases with the size of the income, up to fifty per cent on incomes above \$1,000,000.

429. Direct Taxes levied by the Federal Government. On five occasions Congress has exercised its constitutional

¹ 157 U. S. 429; 158 U. S. 601.

power to levy direct taxes proportioned among the States according to population. The first tax of this kind was levied in 1798, three others during the War of 1812, and one in 1861. The first four of these were laid upon real estate and slaves, the act of 1861 upon real estate alone. Except in the greatest emergency, it is unlikely that Congress will again levy direct taxes, since under the rule of apportionment the burden of such taxation weighs most heavily upon the poorer States.

430. Anticipatory or Extraordinary Revenues. In addition to the revenue secured from the sources already described, the federal government may obtain funds through the use of its credit. The constitution vests in Congress power "to borrow money on the credit of the United States,"¹ thus conferring the borrowing power in the broadest possible terms, so that it may be commensurate with the needs of government.

Governments generally borrow money by issuing bonds, bills of credit (such as treasury notes), or other evidences of indebtedness. But Congress is not limited to methods of borrowing methods of borrowing which are so clearly and directly adapted to the end in view; it may adopt any means it deems conducive to the efficient execution of the power, provided only that they are appropriate to the end, and legitimate, that is, within the scope of the constitution. Thus Congress may charter a federal bank, this having been held by the Supreme Court to be a necessary and proper means of carrying on the fiscal operations of government.² Moreover, as an incident of the power to borrow money and provide a currency, Congress may establish a system of national and federal reserve banks, such as exists to-day. Not only may Congress issue bills of credit, such as treasury notes, but as an incident of the borrowing power,

¹ Constitution, Art. 1, Sec. 8, Par. 2.

² On the theory that the credit of the government is thereby strengthened and its borrowing powers enlarged. *McCulloch v. Maryland*, 4 Wheat. 816; Thayer's Cases, I, #71; *Osborne et al. v. United States Bank*, 9 Wheat. 758.

Congress may make such notes a legal tender for all public and private debts.

431. Bond Issues. In negotiating public loans, governments usually proceed by one of two methods. The first is to prepare the bonds or other evidences of indebtedness, fixing all the conditions (such as the amount, time, and rate of interest), and then offer the securities to all buyers at the same price. This method of selling bonds by popular subscription was relied on by the national government in raising our great Liberty Loans, and proved very successful.

The second method of marketing bonds is for the government to advertise that bids for a certain amount of bonds are desired. Bankers and capitalists then compete for the privilege of taking the bond issue in whole or in part. The bidders offer to provide the money at a certain rate of interest, or if the rate of interest and the amount of the bonds have been determined, offer to buy them at a certain rate, quoted as so much per hundred. The most favorable terms offered are then accepted, and upon delivering the money to the government, the purchasers receive the bonds.¹ In former times, our national government has often sold its bonds in this way, and this is still the usual method of selling State, city, and county bonds.

Fiscal considerations will determine the time for which the bonds shall run, the amount, and the rate of interest. If intended for popular subscription, the bonds must be in small amounts; otherwise the units may be larger. If the rate of interest offered is too low, the bonds will not sell except below par. Both principal and interest of bonds are payable in gold. During the great World War of 1917, our government wisely decided to sell its bonds directly to the people, through popu-

¹ The first of these methods has the advantage of interesting many individual citizens in the loan, the second method secures to the government the advantage of competition among those having money to loan.

Subscrip-
tion — first
method

Competitive
bids

Maturity,
and interest
rate

lar subscription; and in order that they might be within reach of all, bonds were offered in denominations as small as fifty dollars. Three great Liberty Loans, aggregating nearly twelve billion dollars, were made during the first year of the war, at interest rates ranging from $3\frac{1}{2}$ to $4\frac{1}{2}$ per cent.

432. Short-time Loans. Bonds are generally issued for loans intended to extend over a considerable number of ~~Treasury notes~~ years; but for short-term loans some variety of treasury notes is generally issued. Thus during the Civil War, the government secured short-term and temporary loans (amounting in all to \$1,098,000,000) through the issue of a variety of interest-bearing notes.¹ In addition to these notes, what was in reality a forced loan was secured through the issue of \$431,000,000 of non-interest-bearing, legal-tender notes, not redeemable in specie.

In the year 1917, a new war savings plan was arranged by which even the smallest investors could aid the government with their savings. Thrift stamps costing twenty-five cents each were sold, sixteen of which, with a few cents additional, could be exchanged for a war savings certificate. These certificates will become due on January 1, 1923, yielding interest at the rate of about four per cent. From this source the government planned to raise two billion dollars during the year 1918.

433. History of the National Debt. The constitution had expressly provided that the debts of the Confederation ~~Assumption~~ government (amounting to about \$54,000,000) should be valid as against the new federal government.² Under the influence of Hamilton, Congress also assumed the war debt incurred by the States during the Revolution (amounting to about \$21,000,000); and thus

¹ Including treasury notes, certificates of deposit, and compound interest notes. The rate of interest varied from five per cent to seven and three-tenths per cent.

² Constitution, Art. vi, Par. 1.

the new government began its career with a national debt of about \$75,000,000.

Hamilton considered a public debt a source of strength to government, on the theory that the holders of bonds would be necessarily interested in the stability of the new government. Hence the Federalists when in power did not aim to extinguish the debt rapidly. But Jefferson entertained a different conception, holding that the public debt was something to be paid as quickly as possible; and this has since been the prevailing theory. From Jefferson's administration, the debt was steadily reduced until the War of 1812, when it increased to nearly \$125,000,000. After the war, it again decreased, until by 1836 the national debt was practically paid, and the government distributed a surplus of about \$28,000,000 to the States.

The Mexican War involved an increased indebtedness of about \$49,000,000; but until the Civil War the national debt remained a comparatively small one, amounting at the outbreak of the war to about \$60,000,-^{Debt prior to Civil War} 000. By 1862 it had increased to over \$500,000,000; and in 1865 it reached a total of \$2,674,815,856.

After the war the country entered upon the tremendous task of paying off the debt, and in twenty-five years, \$1,784,031,486 of the public debt was paid, leaving an indebtedness of \$890,784,370.¹ This amount was somewhat increased by the Spanish-American War; but in the year preceding our entry into the World War, the national debt was \$989,219,621, or less than ten dollars *per capita*. This indebtedness was increased to vast proportions as a result of our participation in the World War, and is now about \$24,000,000,000.

¹ The debt less cash in the treasury.

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QUESTIONS AND EXERCISES

1. Report upon the financial difficulties of the government under the Articles of Confederation.
2. Prepare a report upon Hamilton's financial policy.
3. Prepare a report upon the systems of taxation employed during the Civil War (Consult Dewey, D. R., *Financial History of the United States*, ch. XXI.)
4. Are there any limitations on the purposes for which the federal government may levy taxes?
5. If both the United States and a State government tax the same property, which claim must be first satisfied?
6. Has the federal government any exclusive powers of taxation?
7. May State governments tax corporations created by the United States? May States tax the incomes of federal officials? The income derived from United States bonds? (Section 447.)
8. May the United States government tax legacies? May a State tax imported goods?
9. Discuss the arguments in favor of a federal income tax.
10. May Congress grant to certain individuals the privilege of importing goods free, while compelling others to pay duties? May Congress provide a lower rate of duties on goods shipped to Boston than on similar goods shipped to New York?
11. What imports are taxed heavily for the sake of revenue only? Does the chief burden fall on articles of luxury or necessity?
12. Describe the collection of the federal revenue. (Dewey, D. R., *Financial History of the United States*, pp. 488-492.)
13. Describe the process of enacting a tariff bill. (Dewey, D. R., *Financial History of the United States*, pp. 478-483.)
14. What were the revenues for the last fiscal year? The expenditures? The chief items under each head?

15. Account for the enormous growth of governmental expenditures. Is this increase justifiable? (Reinsch, P. S., *Readings*, pp. 355-359.)
16. Expenditures for the army, fortifications, navy, and pensions comprise what per cent of the total federal expenditures? Is this excessive?
17. Describe the process of passing appropriation bills. (Dewey, D. R., *Financial History*, pp. 483-488; Reinsch, P. S., *Readings*, pp. 301-355.)
18. Summarize the criticisms upon our system of congressional finance. How can these defects be remedied? (Bryce, James, *The American Commonwealth*, I, pp. 174-182; Reinsch, P. S., *Readings*, pp. 317-320.)
19. Discuss the reasons given by President Cleveland for his veto of the River and Harbor Bill in 1896. (Reinsch, P. S., *Readings*, pp. 359-361.)
20. May Congress distribute surplus revenue among the States? Has this ever been done?
21. Report upon the custody of the public funds. (Kinley, David, *The Independent Treasury of the United States*; Dewey, D. R., *Financial History*, pp. 492-494.)
22. Are there any limitations on the borrowing power of the United States?
23. May Congress lower the rate of interest on government bonds before their maturity?
24. What is meant by the statement that bonds are quoted at 106? At 98? Examine your daily papers for the current price of United States bonds. How do you account for difference in these prices?
25. What is a sinking-fund? What is meant by funding the debt?

CHAPTER XXX

COINAGE AND CURRENCY

434. Origin and Functions of Money. Money may be defined as that which serves as a medium of exchange throughout the community, being accepted in final discharge of debts and in full payment for commodities, without reference to the credit of the person who offers it.¹

The earliest exchanges were effected by barter, but the serious disadvantages of this method led to the adoption of a generally desired commodity as a common medium of exchange. Cattle, furs, tobacco, and other commodities have served in primitive societies as a medium of exchange; but these crude forms of money were gradually supplanted by the precious metals, gold and silver.²

Money owes its origin to the action of individuals, but governments gradually asserted their control over money in three ways: (1) by selecting the commodity which had previously served as a medium of exchange between individuals, and making it the means of payment for government fines and taxes; (2) by establishing systems of public coinage and prohibiting coinage by private individuals; (3) by making the government coins a legal tender in discharge of all debts.

Money serves three important functions: (1) as a medium of exchange, obviating the difficulties of barter; (2) as a measure of values, that is, a common denominator in which the exchange values of other commodi-

¹ Definition adapted from Walker, F. A., *Money in its Relations to Trade and Industry*, p. 4.

² The characteristics of a good money material, possessed in large degree by the precious metals, are: (1) commodity value, arising from general desirability, (2) high specific value, (3) portability, (4) durability, (5) divisibility, (6) convertibility, (7) uniformity of value, (8) cognisability, (9) homogeneity.

ties are reckoned; (3) as a standard of deferred payments, that is, the measure of debts whose payment is postponed to a future time.

435. Monetary System of the United States. Power to regulate the monetary system of the United States is vested exclusively in Congress, the States being forbidden to create either a metallic or a paper currency. Financial powers of Congress The federal constitution confers upon Congress the power "to coin money and regulate the value thereof and of foreign coin";¹ and by express provision the States are forbidden to coin money, emit bills of credit, or make anything but gold or silver coin a legal tender in payment of debts.² Under the interpretation of the Supreme Court, Congress is thus vested expressly with the power to create metal money and regulate its value; vested impliedly with power to create paper money and regulate its value; and vested impliedly with power to make anything it wishes legal tender in payment of any debt.³

Currency — a term which includes all money authorized by the government — is of two kinds, metallic and paper. The metallic currency of the United States now Kinds of money consists of gold coins, silver dollars, and subsidiary coins; the paper currency of gold certificates, silver certificates, United States notes, national-bank notes, treasury notes (Act of 1890), and federal reserve notes. Thus, in all, nine kinds of money or currency are authorized, three of which — gold coins, silver dollars, and United States notes — are full legal tender; while the subsidiary coins are legal tender only in limited amounts.⁴

436. Volume of Money. The entire volume of money in the United States on July 1, 1916, is shown by the table on next page.

¹ Constitution, Art. I, Sec. 8, Par. 5.

² *Ibid.*, Art. I, Sec. 10, Par. 1.

³ *Juilliard v. Greenman*, 110 U. S. 421, Thayer's Cases, II, 2255.

⁴ Subsidiary coins include the half-dollar, quarter, and dime, which are legal tender to the amount of ten dollars, and the so-called minor coins, the nickel and cent, which are legal tender to the amount of twenty-five cents.

<i>Kind of money</i>	<i>In treasury</i>	<i>In circulation</i>	<i>Total</i>
Gold coin ..	\$238,093,644	\$ 637,250,272	\$ 875,343,916
Silver dollars	9,846,285	66,414,932	76,261,217
Subsidiary coins ..	17,440,437	171,440,851	188,890,288
Gold certificates ..		1,418,823,289	1,418,823,289
Silver certificates.....		489,910,937	489,910,937
United States notes ..	4,961,469	341,719,547	346,681,016
National bank notes ..	24,778,866	719,400,794	744,174,660
Treasury notes.....		2,098,165	2,098,165
Federal reserve notes..	3,067,665	178,100,785	176,168,450
Grand total. .	\$298,183,366	\$4,015,168,572	\$4,313,351,938

437. History of Metallic Currency to 1873. During the Revolutionary period, the colonies relied for their metallic currency chiefly upon English, French, and Spanish coins; and various units of account were employed in different sections of the country. Under the Articles of Confederation, the currency remained in a chaotic condition, for the States retained the right to coin money.

The federal constitution gave the national government entire control of the currency, and in 1792 Congress passed the first coinage act. This law provided for the free coinage of gold and silver at the ratio of 15 to 1, a proportion which approximated the bullion values of the metals. The monetary unit was the gold dollar consisting of $24\frac{1}{2}$ grains of pure gold, and the silver dollar containing fifteen times that amount, or $371\frac{1}{4}$ grains of pure silver. Eagles, half and quarter eagles, and silver dollars were to be coined, and were made full legal tender.

The mint ratio of 15 to 1 thus established between gold and silver soon proved to be an undervaluation of gold in the world's market; in other words, within a few years a pound of gold was worth, as bullion, more than fifteen pounds of silver. Hence little gold was brought to the mint, and during the period from 1804 to 1834, only about nine million dollars of gold was

coined. Gold disappeared from circulation owing to a monetary principle known as Gresham's Law — that "bad money tends to drive out good, but good money cannot drive out bad." In other words, if both metals are legal tender, people will pay their debts with the cheaper money, the dearer money being hoarded or exported.

As a result of this discrepancy between the mint and the market ratios of gold and silver, a new coinage act was passed in 1834, which reduced the weight of the ~~coinage Act~~ gold dollar from 24.75 to 23.22 grains. Since ^{of 1834} the weight of the silver dollar remained the same (371.25 grains), this established a ratio of approximately 16 to 1. This mint ratio in turn soon proved to be an undervaluation of silver as compared with the market ratio;¹ that is, sixteen ounces of silver became worth more in the market than one ounce of gold. In accordance with Gresham's Law, silver coins then disappeared from circulation, and after 1840 silver dollars were rarely seen.

After 1861 specie payments were suspended; large quantities of paper money were issued, and gold and silver disappeared from circulation, or circulated ^{Suspension of specie payments} only at a heavy premium.

438. History of Metallic Currency, 1873-1900. In 1873 an act was passed which discontinued the coinage of the silver dollar of 371½ grains, and established as ~~demonetization of silver~~ the sole unit of value the gold dollar containing 23.22 grains of pure gold. Silver was thus demonetized (that is, no longer received by the government to be coined into money); and the country was placed upon a monometallic (one-metal) basis, with free coinage of gold only. This action in combination with other causes² led to a rapid decline in the value of silver as compared with that of gold.

¹ The discovery of gold in California in 1848, and the subsequent large production of gold in California and Australia, lowered the value of that metal as compared to silver.

² Especially the demonetization of silver by Germany in 1871, the limitation placed upon silver coinage by the Latin Union in 1873, and the discovery of large silver-mines in Nevada.

This demonetization of silver attracted little attention in 1873; but as silver began to decline rapidly in price, ~~battle of the~~ those who were interested in its sale as a commodity, together with many who believed the circulating medium unduly restricted if limited to one metal, united in a demand for the renewed free coinage of silver. The more radical friends of silver referred to the demonetization act as "the crime of '73"; and the period from 1873 to 1900 — described by one writer as the "battle of the standards" — was one of constant agitation, discussion, and legislation with reference to the money question.

439. The Coinage Act of 1878. The demand for the renewed coinage of silver was in part recognized by the ~~Bland-~~ ~~Allison~~ Bland-Allison Act of 1878. As originally passed ~~Allison Act~~ by the House, this act provided for the free and unlimited coinage of silver at the ratio of 16 to 1; but as amended by the Senate, the volume of silver coinage was restricted. The act provided that the Secretary of the Treasury should purchase silver bullion at the market price, to the amount of not less than \$2,000,000 nor more than \$4,000,000 per month; and the bullion thus purchased was to be coined into dollars which were to be full legal tender.

440. The Sherman Act and its Results. In 1890, the Bland-Allison Act was repealed and the Sherman Act ~~Provisions~~ passed, directing the Secretary of the Treasury to purchase 4,500,000 ounces of silver each month, paying for it with legal-tender treasury notes. These treasury notes were to be redeemed in either gold or silver coin at the discretion of the Secretary; but since the act declared it to be the policy of the United States to maintain the two metals on a parity with each other, this was interpreted by the Treasury Department as a virtual promise that the notes should be redeemed in gold, or its exact equivalent.

The resumption of specie payments January 1, 1879, had been accomplished by the accumulation in the treasury of a gold reserve of \$133,000,000 in excess of all liabilities. This sum, although slightly less than forty per cent of the outstanding United States notes, proved more than sufficient for redemption purposes. In the fourteen years from 1879 to 1892, only an insignificant amount of gold was paid out by the Treasury Department for redemption, owing to the fact that government credit and business conditions were such that few notes were presented.¹ No definite sum was required by law to be set aside as a gold reserve, but tradition and custom had fixed \$100,000,000 as the sum necessary to guarantee the redemption of the notes. The Sherman Act of 1890 increased the volume of outstanding legal-tender notes by over \$50,000,000 annually, without providing an additional gold reserve for redemption purposes. The Treasury Department was unable to increase the reserve from funds on hand, as government revenues were falling off, owing to the business depression which finally culminated in the panic of 1893.²

In June, 1893, the British government closed the mints of India to the coinage of silver, and the price of silver bullion declined rapidly. In the same year the gold reserve of the Treasury Department began to decline, since legal-tender notes were being presented in large amounts, owing to the doubt entertained by many people as to the ability of government to redeem them in gold. Thus in 1893, \$102,100,000 of legal-tender notes were presented for redemption, as compared with \$9,126,000 in the preceding year. The value of the bullion in the silver dollar in 1893 was only sixty cents, and had the Treasury Department redeemed legal tenders in silver, the probable result would have been immediate depreciation of the notes.

¹ The largest amount of notes redeemed in any one year prior to 1893 was in 1892, when notes to the amount of \$9,126,000 were presented.

² In 1890, the excess of revenue over expenditures was \$105,344,000, in 1892, \$9,914,000, in 1893, \$2,542,000, while in 1894 there was a deficit amounting to \$69,803,000.

Under these conditions President Cleveland summoned Congress in special session (August, 1893); and a statute was passed repealing that part of the Sherman Act which provided for the monthly purchase of silver, thus putting an end to further issues of treasury notes. But much of the mischief had already been done, and during the years 1893–1896 the gold reserve was almost constantly below \$100,000,000. As the revenue from customs duties and excises had declined sharply, the Treasury found itself compelled to sell bonds in order to obtain gold with which to redeem notes. In all, \$260,000,000 of bonds were sold for gold, which in turn was quickly paid out in redemption of notes. But gradually the panic began to subside; business conditions improved, government revenues increased, and shortly after the presidential campaign of 1896, gold once more flowed freely into the treasury, and the crisis was passed.

441. Arguments for Bimetallism. The burning issue in the presidential campaigns of 1896 and 1900 was that of free coinage of silver at the old ratio of 16 to 1. The principal arguments urged by those who favored bimetallism¹ were:—

(1) The double standard gives a more stable money unit than the single standard, because a larger stock of metal is thereby made available for money. Prices of value will fluctuate less, for if one metal rises in value owing to a decreased production, the other metal will take its place, thus preventing a fall in prices.

(2) There has been a general fall of prices in all gold-standard countries since 1873, and this has injured debtors by increasing the burden of their debts. In other words, a debt — such as a mortgage — contracted in money of relatively low purchasing power must be repaid in dollars whose purchasing power has greatly increased.

¹ Three conditions are essential to bimetallism: (1) two metals; (2) free (unlimited) coinage of both at a ratio fixed by law; and (3) both metals full legal tender in payment of debts.

(3) The world's stock of gold is not sufficient for the money demand of the world, and hence gold monometallism means a continuous fall of prices, and a constantly increasing burden upon the debtor class.

Stock of
gold insuf-
ficient

442. Arguments for Monometallism. To these arguments in favor of the free coinage of silver the monometallists replied:—

(1) National bimetallism is impossible, the so-called double standard being merely an alternating standard. Unless the legal ratio between gold and silver exactly coincides with the market ratio, that is, unless the mint valuation of each metal be the same as the market value of the bullion, the cheaper metal will be used as money in accordance with Gresham's Law. This was the experience of the United States after the acts of 1792 and 1834, and has been the experience of all other countries under bimetallism.

(2) The proposed legal ratio of 16 to 1 greatly overvalues silver as compared with the market ratio of 30 to 1.¹ Hence free coinage of silver at 16 to 1 would mean not bimetallism in fact, but silver monometallism. Being worth more as bullion, gold would not be used as money, but would be hoarded or exported in accordance with Gresham's Law. Further, debts contracted on a gold basis would be paid in silver money of greatly decreased purchasing power.

Overvalua-
tion of
silver

(3) The fall of prices is due not to scarcity of money material, but to improved methods of production. The increased production secures practically the same money return as before, through the sale of a larger number of commodities at a lower price; and hence debtors whose business is affected by improved methods of production are not unduly burdened. In any event, changes in the purchasing power of money are part

Cause of
decline in
prices

¹ This was the ratio in 1890.

of the risk incurred by persons who enter into long-time contracts, such changes benefiting creditors if prices fall, debtors if they rise.

^{Increased production of gold} (4) The production of gold is increasing rapidly, having nearly doubled from 1890 to 1897, and is entirely sufficient to meet the demands of the world's trade.¹

^{Chief provisions} 443. **Currency Act of 1900.** The elections of 1896 and 1900 resulted in the defeat of the party declaring in favor of the free coinage of silver at the ratio of 16 to 1, and the Currency Act of March 14, 1900, formally committed the United States to the policy of gold monometallism which had in fact prevailed since 1873. The important provisions of this act are:—

(1) The gold dollar is declared to be the standard unit of value, and all forms of money issued by the government are to be maintained on a parity with it.

(2) The treasury notes of 1890 are to be retired as rapidly as possible, being replaced by silver coins or silver certificates.

(3) Greenbacks when paid into the treasury are not to be reissued except for gold; and a special gold reserve of \$150,000,000 is to be maintained for their redemption. If necessary to maintain the gold reserve, short-time gold bonds bearing not over three per cent interest may be issued and sold to make up the deficiency in the reserve.

(4) New regulations are introduced with reference to the various forms of paper money, such as that gold certificates shall not be issued in smaller amounts than twenty dollars each, while silver certificates are to be issued only in denominations of ten dollars or less.

444. **Paper Currency.** Paper currency is of two kinds, bank notes and government paper money. The discussion of bank currency involves a brief study of the institutions

¹ In 1890, 5,749,900 ounces of gold were produced valued at \$118,848,700; in 1897 11,400,068 ounces valued at \$236,073,700.

by which such currency has been issued — the two United States banks, the State banks, and the existing national banks. Government paper money will be discussed under two heads, treasury notes and legal-tender notes.

445. First United States Bank. Hamilton's financial measures included the organization of a bank modeled on the Bank of England, in which the federal government should be interested as a partner. The chief advantages claimed for such an institution were that it would afford a market for government bonds, and aid the Treasury by making loans; that it would afford a safe depository for government funds; and that its note issues would furnish the country with a uniform and stable paper currency. The bank project was vigorously opposed on constitutional as well as economic grounds by Jefferson, Madison, and Randolph, but the act granting the charter became law in 1791.¹

Advantages
of a federal
bank

The bank was prosperous and successful, paying eight per cent dividends from the start; and the assistance which it rendered to the Treasury was fully as great as had been anticipated. However, when its charter expired in 1811, the bill for renewal was defeated in Congress by a close vote, the partisans of the State banks being aided in their opposition by those who believed a federal bank unconstitutional.

446. Second United States Bank. The close of the War of 1812 found the currency in confusion. The State banks outside of Massachusetts had suspended specie payments, and had issued bank notes in excessive amounts. A second United States Bank was proposed as a means of supplying financial resources to an embarrassed Treasury, and restoring the national currency

Reason for
establish-
ment

¹ The charter provided for a capital stock of ten millions, of which one fifth was to be subscribed by the government (the government subscription being loaned by the bank). Of the remainder of the capital, one fourth was to be payable in specie, and three fourths in government bonds bearing six per cent interest. The bank could issue notes to an amount which should not exceed the deposits by over ten millions, and these notes were receivable in payment of all debts due the United States.

to a specie basis. Accordingly in 1816 Congress chartered a second United States Bank for a period of twenty years, following substantially the plan of the first bank.

The central bank was located at Philadelphia, and in time twenty-five branches were established. The affairs of the bank were grossly mismanaged during the first two years of its existence; and although sound business principles prevailed later, the success of the first United States Bank was only in part duplicated. The institution aroused the hostility of the State banks, and eventually incurred the enmity of President Jackson, whose famous war on the bank (1832-1836) prevented the renewal of its charter.

447. Constitutionality of a Federal Bank. The question of constitutionality was settled by the Supreme Court in *McCulloch v. Maryland* (1819).¹ The Maryland branch of the bank refused to pay the tax upon its circulating notes imposed by the Maryland legislature, whereupon the State commenced suit against the cashier, McCulloch, to recover the amount of the tax. The opinion of the court, written by Chief-Justice Marshall, is one of the ablest and most celebrated expositions of the fundamental powers of the federal government. The two points decided in this case are: (1) Under the Constitution, Congress has the power to charter a United States Bank, this being a necessary and proper instrument for carrying on the fiscal operations of government. (2) A State cannot tax such a bank or its branches, since the bank is an instrument employed by the federal government in the execution of its powers, and such an agency is exempt from State taxation.²

448. State Banks. Much of the opposition to the first

¹ 4 Wheat. 816; Thayer's Cases, I, 271; II, 1340.

² "If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint, they may tax patent rights, they may tax the papers of the customs house, they may tax judicial process, they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the people. They did not design to make their government dependent on the States." — 4 Wheaton, 816, Thayer's Cases, II, 1344.

and second United States Banks came from the banks chartered by the various States. Three such ^{character-}
~~institutions~~ existed when the new government ^{institutions} was established; in 1815 there were 208; and during the period from 1829-1837, the number increased from 329 to 788, while the volume of note issues and loans more than trebled. The character of the State banks varied greatly, depending upon the conditions imposed by the State granting the charter, and upon the surplus capital available in the particular community. Some were "mere batches of paper money" without property or resources; others, especially in New York and New England, were carefully regulated and prudently managed.

The chief defects of the State banks were the excessive issues of notes, and the making of loans on inadequate security. Note issues were sometimes based upon ^{State bank} ~~notes~~ the bank's assets (which frequently amounted to nothing at all); or were protected by a general safety fund; or were based upon the faith and credit of the State granting the charter. The notes generally circulated at a discount ranging from ten to fifty per cent, and were of such uncertain value that this form of money became known as "wildcat currency."¹

In 1865, to strengthen the newly established national banking system, Congress laid a tax of ten per cent on the issue of notes by State banks, thereby taxing ^{State bank} ~~notes eliminated~~ these notes out of existence. Many State banks still exist, performing the banking functions of deposit and discount; but they cannot afford to issue notes because of the federal tax.

449. The National Banks. During the Civil War, the imperious necessity of finding a market for United States bonds, together with the recognized evils ^{Establishment} of the State bank currency, led to the establishment of

¹ In January, 1862, the outstanding notes of the State banks amounted to \$164,000,000, and this amount was expressed in about 7000 varieties of notes issued by 1400 different banks (not counting 5500 varieties of fraudulent notes).

a system of national banks (February, 1863). In 1864 the law was largely recast, and (with later minor changes), the national banking system as it exists to-day was created.

Besides the usual banking functions of deposit and discount, national banks perform three important public ^{Public functions} functions: (1) that of affording a market for United States bonds, (2) providing a paper currency of uniform and stable value, and (3) serving as depositories for public money.

(1) Organizers of a national bank (not less than five in number) are required to invest at least one fourth of the ^{Market for bonds} capital of the bank in United States bonds, which are then deposited with the comptroller of the currency at Washington. The minimum capital depends upon the size of the city, and ranges from \$25,000 in places of less than 3000 inhabitants to \$200,000 in cities of over 50,000.

(2) The second public function of national banks is that of issuing notes. Every bank is entitled to receive from the ^{Note issues} comptroller national bank-notes equal in amount to the par value of the bonds deposited. By depositing additional bonds, banks may increase their note issues as business conditions require (not, however, in excess of their capital stock). The notes issued are not legal tender, but they circulate throughout the country at par because their ultimate redemption is guaranteed by the deposit of United States bonds.

(3) The third public function is that of serving as depositories for government funds. When government ^{Public depositories} funds are thus deposited, the banks are required to furnish satisfactory security by the deposit of United States or other bonds with the Treasury Department.

450. Custody of the Public Funds. During the existence ^{Early public depositories} of the first and second United States Banks, these institutions had served as public depositories; in the interval between the two banks (1811-

1816), the government used the State banks as depositories, as it did in 1834 when the Secretary of the Treasury withdrew the government deposits from the United States Bank.

In 1840, an act was passed establishing the independent treasury system. Under this plan, the public funds were kept in the vaults of the treasury at Washington, or in the nine sub-treasuries located in various cities.¹ The drawback of the independent treasury system was that it involved the withdrawal of large sums of money from circulation, thereby causing spasmodic fluctuations in prices and derangement of the money market. With the establishment of our system of national banks, and later, by creating the federal reserve and farm loan banks, this objectionable feature was done away with.² Only a part of the public funds are now kept in the treasury and sub-treasuries; and the Secretary of the Treasury, at his discretion, may deposit the public funds with the national banks, or with the federal reserve or farm loan banks, so that these funds become available in meeting the business needs of the country.

451. Government Paper Money. Bank notes constitute one great class of paper currency; the other is government paper money. The first issue of this form of money under the constitution was during the War of 1812, when treasury notes to the amount of \$36,680,794 were issued (1812-1815). These notes were not legal tender, but were receivable for taxes and public dues. The greater part was in denominations of not less than twenty dollars, bearing interest at five and two-thirds per cent. These notes remained at par in specie until the banks suspended specie payments (1814).

The panic of 1837 led to a second issue of treasury notes,

¹ Namely, Baltimore, Boston, Chicago, Cincinnati, New Orleans, New York, Philadelphia, St. Louis, and San Francisco. Each sub-treasury is in charge of an assistant treasurer of the United States.

² See Section 444.

the total issues from 1837 to 1843 amounting to \$47,002,900.

Later issues A third issue of such notes occurred during the Mexican War (1846-1848).

During the Civil War, a large variety of interest-bearing notes was issued, including one and two-year notes, compound interest notes, and certificates of deposit, amounting in all to \$1,098,000,000. These issues, like the earlier ones, were not legal tender, and were really certificates of indebtedness issued to secure short-time voluntary loans.

452. Legal-Tender United States Notes. On February 25, 1862, an act was passed authorizing the issue of a different sort of currency — namely, \$150,000,000 of legal-tender United States notes, in denominations of not less than five dollars. The

notes authorized were to be a legal tender for all public and private debts, except duties on imports and interest on United States bonds and securities.¹ Inasmuch as the notes were not redeemable in specie, they virtually constituted a forced loan to the government. Shortly afterwards, a second act was passed (July 11, 1862), authorizing the issue of another \$150,000,000. By acts of January 17, 1863, and March 3, 1863, a third issue of \$150,000,000 was authorized. Thus the legal-tender acts authorized a total of \$450,000,000 in notes, of which amount \$431,000,000 was actually outstanding on June 30, 1864.

The issue of these non-interest-bearing legal-tender notes constitutes a landmark in our financial history, for it was the first attempt under the constitution to create fiat money — that is, paper currency not based upon coin or bullion, containing no promise to pay coin, and therefore not convertible. The opponents of the measure urged the unconstitutionality of such action, and the economic disasters which would surely follow. On

¹ Interest on securities was made payable in coin in order to sustain the government credit, and duties on imports were payable in coin in order that the government might have specie with which to pay the interest.

the other hand, the issue of legal tenders was declared necessary and justifiable by reason of public exigency — the necessity of meeting immediate government obligations, and of providing money for the purchase of bonds.

The greenbacks fluctuated greatly in value, falling to thirty-nine cents on the dollar in July, 1864. The chief results of the depreciation were the rise of prices ^{Deprecia-} of commodities, and the fluctuating premiums on ^{tion} gold. Prices more than doubled from 1860 to 1865, while money wages only increased about forty-three per cent. Hence the heavy burden of inflation rested upon the laborers of the country, since wages and salaries did not rise in proportion to prices.¹

After the war the volume of greenbacks was gradually decreased, but yielding to popular opposition, Congress in 1878 ordered that there should be no further contraction of the greenbacks, and that when paid into the treasury these notes should be reissued. Since this legislation has not been repealed, the amount of legal-tender notes then outstanding, \$346,681,016, is still current.

453. Resumption of Specie Payments. Not until January 14, 1875, did Congress enact legislation looking toward a resumption of specie payments. On that date ^{Resumption} an act was passed, providing for resumption on January 1, 1879. The Secretary of the Treasury was authorized to use the surplus specie in the treasury for this purpose, and if necessary to obtain additional gold through the sale of bonds. On becoming Secretary of the Treasury in 1877, Sherman commenced the accumulation of a gold reserve; and on January 1, 1879, he had accumulated \$183,-000,000 in coin (\$95,500,000 through the sale of bonds). Slowly but gradually the value of the greenbacks rose toward parity with gold; and on December 17, 1878, they were quoted at par.

¹ The increased cost of the war to the government owing to the issue of paper money has been estimated at from \$500,000,000 to \$800,000,000; but this amount is small in comparison with the burden upon the people by inflated prices.

454. The Federal Reserve Act. In 1913, Congress passed the important currency measure known as the **Purpose** "Federal Reserve Act." The object of this act

was to make our currency system more elastic, and our banking system more responsive to the needs of trade. For example, if more money is needed to meet business conditions, this law permits the issue of currency in the form of federal reserve notes. These are secured by short-time commercial paper, and are withdrawn from circulation when no longer needed.

The act creates a central managing board at Washington, known as the "Federal Reserve Board." This **Federal Reserve Board** consists of seven members, including the Secretary of the Treasury, the Comptroller of the Currency, and five members appointed by the President. This board has general supervision over our national banking system. The entire United States is divided into twelve federal reserve districts. In each of these a chief city is selected as a banking center; for example, New York, Chicago, St. Louis, San Francisco, and Cleveland are the centers for their respective districts.

To understand the working of the measure, let us take the federal reserve bank located at Cleveland as an **Federal Reserve Banks** example. This is the reserve bank for District No. 4, comprising the State of Ohio, western Pennsylvania, eastern Kentucky, and the panhandle of West Virginia. All national banks in this district are members of the system, each membership bank having subscribed to the stock of the federal reserve bank.¹ The Cleveland Reserve Bank is managed by a board of nine directors, three of whom are chosen by the Federal Reserve Board at Washington, and six by the membership banks of the district. The Cleveland Reserve Bank holds a part of the reserves of its membership banks, and exercises other important banking functions.

¹ State banks may join the system upon their own application.

Let us suppose that for some reason, such as the moving of crops, a large amount of money is needed temporarily in the Cleveland district. This can be supplied in several ways. The Secretary of the Treasury, acting with the Federal Reserve Board at Washington, may transfer additional deposits from unused money in the Treasury. Or the Federal Reserve Board may make temporary transfer to Cleveland of surplus reserve funds in the federal reserve bank at Chicago, or the one at New York.

Most important of all, the reserve bank at Cleveland is authorized to rediscount commercial paper, and to supply its membership banks with currency to be loaned to their customers upon such paper. In other words, the reserve bank accepts from its membership banks the collateral on which they have made loans, and issues to them notes or currency in exchange for this collateral.¹ Provision is made for the withdrawal of this extra currency when the need for it has been met, so that there may not be a permanent inflation of the outstanding volume of circulating notes. In this way, a discount market is created which makes the bills and notes that are given and taken in ordinary business readily translatable into cash.

The new system enables the banking power of the United States to be used as a whole in times of emergency, very much as if there were one central bank with branches throughout the country. The scattered reserves of thousands of heretofore independent banks are mobilized, and made mutually available for one another. Moreover, the government no longer deposits its surplus funds in ordinary banks, or lets them lie unused in the vaults of sub-treasuries; but rather, places them in the federal reserve banks, subject to the supervision of the Federal Reserve Board at Washington.

¹ The notes issued in this way are redeemable in gold at the Treasury of the United States, or in gold or lawful money at any federal reserve bank.

Besides reforming our national banking system, the new currency law extends the aid of that system to fields hitherto untouched. We have seen that the act provides credit facilities for agriculture, recognizing the peculiar needs of that industry, and making special provision for them. It also lends its aid to our rapidly growing foreign commerce. With the approval of the Federal Reserve Board, any national bank with a capital and surplus of \$1,000,000 may establish foreign branches "for the furtherance of the commerce of the United States."

Aid to
agriculture
and foreign
commerce

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QUESTIONS AND EXERCISES

1. What were Hamilton's arguments in favor of the establishment of the first United States Bank?
2. Prepare a report on Jackson's war on the second United States Bank.
3. Weigh a five-dollar gold-piece on a druggist's scales; weigh five silver dollars. What is the ratio of these weights?
4. What is the market or bullion value of an ounce of gold? Of an ounce of silver? What is the market ratio between the two metals? How does this compare with the ratio found above?
5. What is the value of the silver in a silver dollar? What makes this coin worth one dollar in gold? What is the value of the gold in a five-dollar gold-piece?
6. How many grains of silver in a half-dollar? Do two silver half-dollars contain as much silver as one silver dollar? Why are they worth as much?
7. Examine the last Statistical Abstract, and prepare a table similar to that in Section 436, showing the amount of money in the United States.
8. From this table calculate the per capita circulation of money in the United States.
9. In what denominations are the different coins and paper money issued by the government?

10. Bring to class each of the various forms of currency for careful examination.
11. What proportion of the total value of money in the United States is in the treasury?
12. Explain how the Secretary of the Treasury may use his discretionary powers so as to influence the money market.
13. What percentage of our entire circulation is either gold or gold certificates?
14. How does the amount of gold in circulation compare with the amount of silver (or silver certificates)?
15. What relation exists between prices and the amount of money in circulation? How is the amount of currency increased as needed?
16. Where is gold produced in large quantities? Where are the largest silver-mines? What was the total production of each metal last year?
17. State Gresham's Law and describe its operation.
18. What sections of the country and what classes of the population have generally favored cheap money? Why is this?
19. Prepare a report upon the free-silver issue in the campaign of 1896.
20. Prepare a report upon the three issues of United States notes during the Civil War.
21. What is the essential difference between United States notes or "green-backs," and other forms of paper money?
22. Explain the causes of the fluctuations in value of United States notes during the period 1862-1879.
23. What do you understand by the resumption of specie payments?
24. Prepare a brief report upon the Legal-Tender decisions.
25. May the United States make its notes legal tender to individuals but not to the government?
26. From your examination of a United States note, answer the following:
(a) In what year did Congress authorize its issue? (b) Is it a legal tender? (c) Penalty for counterfeiting it? (d) What did the words "will pay the bearer five dollars" mean when the note was issued? (e) What do these words mean now?
27. Would it have been better if the framers of the constitution had inserted a prohibition of the issue of legal-tender paper money? What danger is there in permitting Congress to exercise this power?
28. May Congress give the national banks a monopoly of the banking business?
29. May a State government levy a tax upon a national bank, or its stock?
30. Name the national banks in your city. What is the capital of each? Why does the public ordinarily have entire confidence in their management?
31. Are national-bank notes legal tender? May Congress make national-bank notes legal tender?
32. Name the banks in your city that are members of the Federal Reserve System.
33. Name several State banks in your city. What functions do these banks exercise? What function possessed by the national banks do they lack?
34. What forms of credit are largely employed as a substitute for money?

CHAPTER XXXI

COMMERCIAL FUNCTIONS

455. Commerce under the Confederation. The constitution has been called "the child of pressing commercial necessity"; and unquestionably the demoralized condition of commerce under the Confederation was a potent factor in securing its adoption.

Regulation by the several States Under the Articles of Confederation, power to regulate commerce had been reserved to the several States; and accordingly each commonwealth imposed its own restrictions upon goods imported from other States or from foreign countries. Hence each commonwealth competed with all the others in foreign and interstate trade, and each sought by reduced duties or more favorable navigation laws to increase its trade at the expense of sister States.

Constitutional provisions **456. Commerce under the Constitution.** The constitution vests in Congress the power "to regulate commerce with foreign nations and among the several States, and with the Indian tribes."¹ Under this provision, each State retains control of the commerce wholly within its boundaries; and only when commerce passes beyond State boundaries to another State or foreign country does it become subject to federal control.²

The term "commerce" as used in the constitution has been broadly construed by the Supreme Court. It includes traffic, or the purchase and sale of goods, and also navigation and intercourse whether by land

¹ *Constitution*, Art. I, Sec. 8, Par. 3.

² The authority of Congress over foreign and interstate commerce is subject to two constitutional limitations: (1) no tax or duty may be levied on articles exported from any State; and (2) no preference may be given, by commercial or revenue regulations, to the ports of one State over those of another.

or water, together with all the means or agencies by which such intercourse is carried on. Transportation of persons, as well as freight, is included within the term.¹ The control of foreign commerce by Congress has been exercised chiefly with reference to three subjects — navigation, the tariff, and immigration.

457. Navigation. Congress regulates navigation between this country and foreign nations, and between the States of the Union. Even navigation upon a ~~Federal~~ stream wholly within the boundaries of a single ^{federal control} State is subject to federal regulation, provided the stream by uniting with other waters forms part of "a continued highway over which commerce is or may be carried on with other States or foreign countries."²

In this connection, Congress has established rules of navigation, including the law of the road at sea, and the marine system of lights and signals. Congress ^{Rules of} has also passed laws relating to the government of ^{navigation} seamen on American ships; defining the liability of ship-owners; establishing port and quarantine regulations;³ requiring the employment of licensed pilots; providing for coast surveys, lighthouses, buoys, life-saving stations, and for the improvement of rivers and harbors.

Especially important are the acts relating to the registry of ships. Vessels that are registered as American are entitled to the protection of this government in ^{Registry} any part of the world, and have other important privileges. Only American vessels can engage in the coasting trade, a term which includes trade with our insular possessions. Tonnage duties (taxes upon the carrying capacity of the ship estimated in tons) are levied upon both

¹ The power of Congress is not limited to the condition of commerce as it existed when the constitution was formed; but the grant is in terms broad enough to enable federal control to keep pace with the progress of the country. Hence, as new agencies of commerce have been created, such as railroads, pipe-lines, telegraph and telephone systems, the federal authority has expanded to include them in its scope.

² *The Daniel Hall*, 10 Wall. 557, 563.

³ For example, certain ports are designated as ports of entry for the collection of customs, and at these ports all vessels are required to enter and clear.

American and foreign vessels; but double duties are levied upon foreign vessels built in this country.

458. The Problem of Shipping in the World War. At the beginning of our war with Germany, less than one tenth of our foreign commerce was carried in American ships. Although our merchant marine totaled 8,600,000 tons, four millions of this tonnage consisted of coastwise vessels, and three millions of vessels that plied the Great Lakes. We had, therefore, less than two million tons of shipping of size and strength practicable for transatlantic sailing. It was this kind of shipping which the country had to produce in order to meet the Kaiser's challenge. At this time, moreover, German submarines were destroying our vessels and those of our allies at the rate of 500,000 tons a month. Unless our shipyards could build many new ships and build them quickly, we could not hope to win the war. The best that our shipyards had done up to this time was in the year 1908, when 442,000 tons of steam shipping were produced. This was far above the average, since for a decade our annual production ranged from 125,000 to 250,000 tons.

Soon after our declaration of war, Congress authorized the expenditure of over one billion dollars for the construction of a great merchant fleet, and the Shipping Board was organized to take charge of the work of construction. The problem of the Shipping Board was to build merchant vessels at the rate of 5,000,-000 tons a year, which was about twenty times our annual output before 1914. This meant that our steel mills had to roll plates on a scale hitherto unknown; our makers of boilers and turbine engines had to multiply their output by ten; existing shipyards must triple and quadruple their facilities almost overnight, and many new plants must be built. After considerable delay owing to differences of opinion as to the kind of ships to be built, the Shipping Board adopted a definite program for the construction of

*Creating a
new mer-
chant fleet*

steel ships. The total tonnage now under construction or authorized by Congress aggregates 10,600,000 tons, the completion of which will probably require from two to three years. With the American shipping already afloat, this program should assure us a merchant fleet aggregating 15,000,000 tons. The United States will then regain the position held prior to the Civil War, when this country was one of the great carrying nations of the world. The World War has clearly demonstrated that both for military and economic reasons, it is undesirable to have our commerce with other countries carried chiefly in foreign ships.

459. River and Harbor Improvements. The improvement of waterways is one of the most important means of aiding navigation, and for this purpose the federal government spends annually many millions. Since 1822 about \$450,000,000 has been thus appropriated, the expenditures being authorized by "river and harbor" bills, usually passed biennially. The great defect of river and harbor legislation is that many unimportant improvements are undertaken in order to appease local interests and thus gain the necessary support of members — an evil so great that the river and harbor bill has been facetiously dubbed the "pork barrel."

Extensive harbor improvements have been carried out, such as the construction of breakwaters and piers at Chicago, Cleveland, Buffalo, and Milwaukee; and vast sums are expended annually for the deepening of harbors, principally by dredging. Expensive works have been constructed on the Mississippi and Missouri rivers to secure deep water by confining the channel between walls, and a jetty system has been created at the mouth of the Mississippi and other Gulf ports. Levees or artificial dikes have also been constructed on a large scale, especially along the Mississippi.¹ All river and harbor

Improve-
ment of
waterways

Harbor im-
provements

¹ The federal government has spent \$130,000,000 on the Mississippi and its tributaries since the Civil War.

improvements undertaken by the federal government are carried on under the direction of the Secretary of War, aided by engineers of the United States Army.

The Panama Canal at the southern extremity of North America is the greatest project yet undertaken by the ^{Panama} United States for the promotion of commerce. ^{Canal}

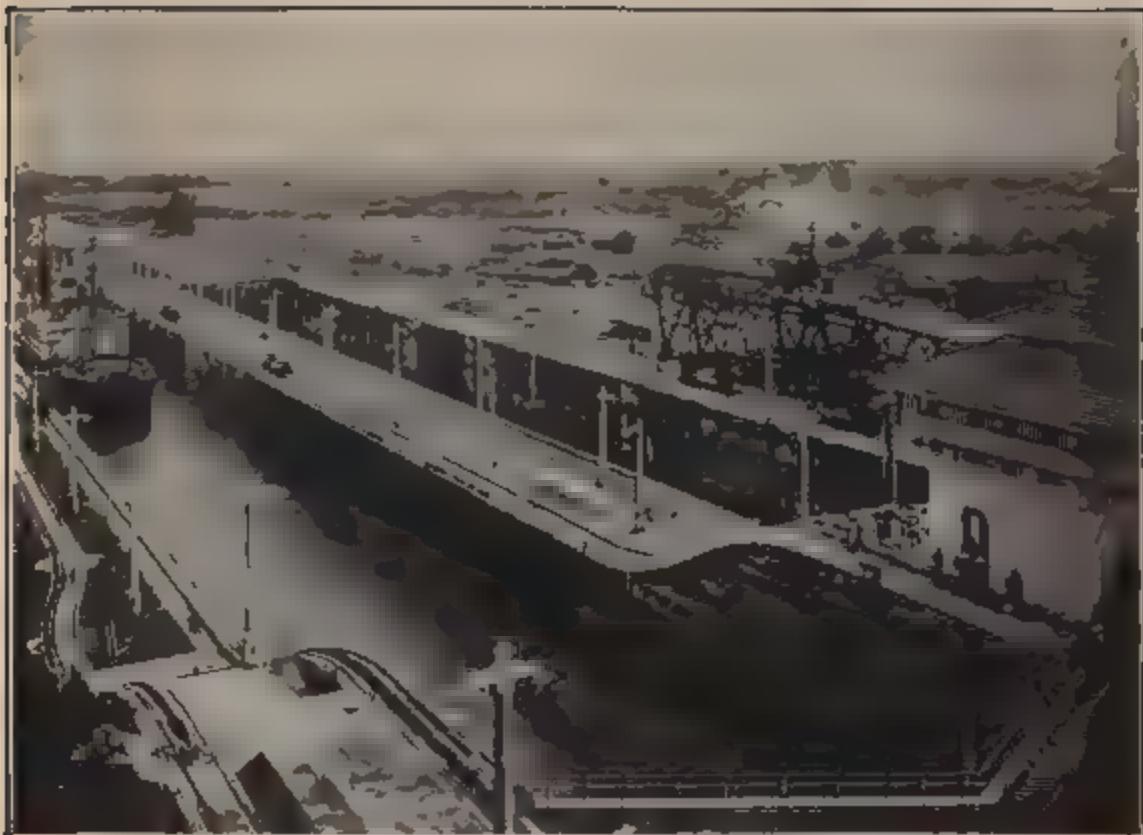
The canal is fifty miles in length, from deep water in the Caribbean Sea to deep water in the Pacific Ocean. Constructed under the direction of the Department of War, it was opened to commerce in August, 1914.

460. Tariff Duties. A system of tariff duties constitutes one of the principal means by which the United States, ^{Revenue} in common with many other countries, seeks to ^{Tariff} regulate commerce. Tariff duties include both import and export duties, but the latter are forbidden under our constitution, and are no longer levied by any important country. Import duties are sometimes levied solely to secure revenue for the government, in which case only commodities that do not compete with domestic products are taxed. This system of duties is called a revenue tariff, and prevails in Great Britain, Holland, Belgium, and a few other countries.

More often import duties are levied so as to restrict foreign competition in the interest of home producers, ^{Protective} being laid upon commodities which compete with ^{Tariff} domestic products. This system of duties is called protective, and prevails in the United States and in many other countries. In the United States the tariff question has frequently been an issue in political campaigns, and has been widely discussed by writers upon economics.

461. Tariff History of the United States. Our tariff history may be divided into four periods: the first extending from 1789 to 1816; the second from 1816 to 1842; the third from 1842 to 1860; and the fourth from 1860 to the present time.

The first period (1789-1816) was one of revenue tariffs,



(By courtesy of the Isthmian Canal Commission)

OPENING OF THE PANAMA CANAL

S.S. Ancon in the West Chamber, Gatun middle locks, August 15, 1914.



(By courtesy of the Isthmian Canal Commission)

OPENING OF THE PANAMA CANAL

S.S. Ancon on Gatun Lake, August 15, 1914.

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which in some instances afforded incidental protection. The second period (1816-1842) is marked by the ^{Early tariffs} inauguration of the protective policy, and by bitter political controversy upon this question. By the tariff act of 1816 duties were placed upon iron and textile manufactures in order to protect the new industries which had sprung up during the War of 1812 against the competition of Great Britain's long established industries.

The development of these manufactures — chiefly in New England and Pennsylvania — gradually made this region the stronghold of the protective move- ^{Sectional differences} ment. The agricultural States of the West were won over to the policy of protection through the argument that the growth of manufacturing centers is essential to afford a stable market for the sale of agricultural products. The South, on the other hand, bitterly opposed protection, on the ground that the tariff increased the price of the manufactured articles for which its staple — cotton — was exchanged. Southern opposition to the protective principle was greatly increased by the so-called "Tariff of Abominations" (1828); and in South Carolina this opposition finally culminated in the famous Nullification Act of 1832. The following year a compromise tariff act was passed, providing for a biennial reduction in rates until in 1842 a level of twenty per cent should be reached.

The third period (1842-1860) is marked by the prevalence of low rates, especially under the Walker Act of 1846, and the tariff of 1857, which reduced duties to a lower point than at any time since the inauguration of the protective policy in 1816.

The fourth period (1861-1910), is characterized by high protective tariffs, a policy inaugurated by the Morrill Act of 1861. Throughout the Civil War, the impera- ^{Civil war} tive need for revenue, together with the desire ^{tariffs} to offset the heavy internal revenue taxes on manufactures, led to repeated tariff enactments, each increasing the rate

of duties. After the war most of the internal revenue taxes were repealed, but the high protective duties remained, and became the permanent economic policy of the country.

In the campaign of 1888 the tariff was one of the principal issues. The success of the Republicans in the election ^{McKinley} led to the enactment of the McKinley Tariff Act ^{tariff} of 1890, a measure which further extended the protective principle, increasing rates to a point higher than the war tariffs. By one provision of this act, the President was empowered to impose duties upon certain commodities, such as sugar, molasses, tea, coffee, and hides, provided any country exporting these commodities placed discriminating duties upon products of the United States.

The victory of the Democratic party in the campaign of 1892 led to a partial reversal of the protective policy in the ^{Wilson} ^{tariff} Wilson Tariff Act of 1894. The act as originally passed by the House made substantial reductions in the rates, and placed many raw materials on the free list. As amended by the Senate and finally accepted by both houses, rates were still reduced, but the measure on the whole was protective. The most important provisions of the act were those placing lumber and wool on the free list, and providing for an income tax to offset the anticipated reduction in revenue.

This measure was replaced in 1897 by the strongly protective tariff known as the Dingley Act, enacted by a ^{Dingley} ^{tariff} Republican administration. The general purpose of the measure was to restore the rates of the McKinley Act of 1890, but in some cases even higher duties were imposed.

In response to a widespread demand for a revision of duties, the Payne-Aldrich Tariff Act was enacted by a ^{Payne-} ^{Aldrich} ^{tariff} Republican Congress in 1909. This measure proved a disappointment to those who desired substantial reductions in tariff rates, since it continued the policy of high protective duties.

In 1913, the Underwood Tariff Act was passed by a Democratic Congress. Material reductions in tariff rates were made by this law, and many important commodities, including sugar and other food products, were ^{Underwood} placed on the free list. An income tax law was ^{Tariff} passed to offset the anticipated loss of revenue.

462. Arguments for Free Trade or a Revenue Tariff. The term "free trade" as commonly used does not denote trade free from all restrictions, but rather ^{Meaning of} ~~free trade~~ trade which is not restricted by any duties except those essential for the purpose of revenue. In other words "free trade" is ordinarily used in the sense of "tariff for revenue," as distinguished from the system of protective duties.

The principal arguments urged by those who advocate free trade, or a revenue tariff, are as follows:—

(1) The arguments in favor of division of labor as between individuals apply with equal force to a territorial division of labor. Just as individuals find advantage in following occupations for which they are especially adapted, so different countries, because of diversity in climate, soil, and natural resources, will profit by devoting their capital and labor to the industries for which nature has especially adapted them. Freedom of exchange facilitates this territorial division of labor by permitting each country to employ its labor and capital in the most productive manner; and the products obtained under these favorable conditions may then be freely exchanged for goods which can be more advantageously produced by other countries.

(2) A protective system, on the contrary, diverts labor and capital from unprotected to protected industries. But the fact that the protected industry needs artificial encouragement proves that it is relatively less productive; hence, such a diversion of labor and capital means curtailed production and eco-

<sup>Territorial
division of
labor</sup>

<sup>Protection
stimulates
less
productive
industries</sup>

nomic waste, since it compels the community to resort to more difficult and costly conditions of production.

(3) Moreover, if the protective policy is consistently followed, tariff rates must be changed to conform to changing industrial conditions. Frequent revision of tariff schedules creates unstable conditions of trade and commerce, resulting in economic loss.

(4) Protection is also attacked as having encouraged the formation of trusts by enabling large combinations of capital to secure a monopoly of the domestic market. World-wide competition, on the other hand, would make such monopolies difficult, if not impossible.

(5) Freedom of trade between the various States of the Union is admitted by protectionists themselves to be an unmixed good, notwithstanding the fact that States differ greatly in soil, climate, and rates of wages; and the same argument applies with equal force to foreign trade, which, it is claimed, does not differ in principle from domestic trade.

(6) Again, protection is criticised on fiscal grounds. Since duties are not levied primarily with reference to revenue, the income derived by the government bears no direct relation to financial needs. A large surplus invites wasteful and extravagant public expenditures; but the protective principle and the industrial danger from frequent changes in tariff schedules tend to prevent a reduction in duties, even when these are clearly excessive.

(7) Protection is condemned on political grounds, since its tendency is to invite lobbying and corruption on the part of those interested in the special advantages which it gives to certain favored industries.

463. Arguments for Protection. The chief arguments urged in behalf of protection are as follows:—

(1) Diversification of industry is essential to the highest

development of a country, and protective duties induce the establishment of industries which otherwise would not be undertaken because of the marked advantages possessed by foreign producers in long established industries. Under the shield of the protective duty the infant industry may be established, and the burden to the consumer caused by the duty is ultimately more than compensated by the permanent creation of a profitable industry. From this point of view, protection is a temporary policy, necessary only until the new industries are firmly established, after which they may be able to compete with foreign industries without the advantage afforded by the tariff.

(2) The "home market" argument was advanced by Henry Clay in order to reconcile the agricultural class to "American system," as protection was then called. Clay urged that the prosperity of the farmer depends upon a regular and constant market for his agricultural produce, and that such a market can be best obtained by upbuilding manufacturing centers within the country. Moreover, these home markets demand perishable goods as well as agricultural staples, and hence encourage the diversified farming which serves to preserve the fertility of the soil.

(3) The wages argument is to-day largely relied on by protectionists, who point to the fact that higher wages are paid in our protected industries than in similar unprotected industries in other countries. It is claimed that a withdrawal of protective duties would lower the rate of wages and the standard of living — in short, that it would pauperize the laborers in many industries.

(4) Political and military reasons make it desirable that a nation should be able to produce its necessities of life, as well as its own military armaments. Hence for the sake of industrial self-sufficiency it may be advisable for a country to employ a part of its labor

and capital even in the relatively less productive industries whose existence is only made possible by protection.

464. Immigration. As part of its commercial power, Congress may regulate immigration or the coming of foreigners to this country for the purpose of residence. Until 1882 immigration to the United States was free from any restriction by federal law.¹ In 1882 Congress passed acts designed to exclude the pauper, criminal, and insane classes of aliens, as well as Chinese laborers; and a few years later (1885) the Alien Contract Labor Law was passed.

Under these and later acts, the classes of aliens debarred include idiots, insane persons, paupers or persons likely to become public charges, epileptics and persons suffering from contagious disease, criminals, polygamists, anarchists, persons whose passage is paid by another (with certain exceptions), laborers under contract made previous to emigration to perform labor or service in the United States, and Chinese and Japanese laborers.

The situation arising as a result of the World War clearly revealed the need of additional restrictions until the millions of foreign born persons already here should become thoroughly Americanized. The law passed by Congress in 1921 limited the number of immigrants during the following year to three per cent of the foreign born persons of each nationality already in the United States.

Immigrants not qualified to enter are returned at the expense of the steamship company bringing them, this liability continuing for a period of one year after landing. Less than two per cent of the immigrants who reach this country are excluded. The administration of immigration laws is entrusted to the commissioner-general of immigration of the Department of Labor. Inspection by United States officials is provided for

¹ However, the Alien Act, in force from 1798 to 1801, authorized the President to expel from the United States any foreigners deemed dangerous to the peace of the nation.

both at the point of departure and at the port of entry in this country.

465. General Characteristics of Immigration. Certain general characteristics of our immigration are so important as to deserve particular notice. Foremost among these is the great increase in the number of immigrants. Except during two decades, immigration has steadily increased since 1820, until just before the present World War, the number of annual arrivals approximated one million.

Even more important than this great increase in numbers is the marked change in the character of immigration. Formerly the great majority of immigrants came from countries allied to us in race or language — from Great Britain, Germany, and the Scandinavian countries; while a very small proportion came from the peoples of southern and eastern Europe allied to us by neither language nor race, and hence vastly more difficult of assimilation. Thus in the decades before 1880, about ninety per cent of our immigrants came from the United Kingdom, Germany, and the Scandinavian countries; and only about ten per cent from the countries of southern and eastern Europe, chiefly Italy, Russia, and Austria-Hungary. In the years since 1880, the immigration from southern Europe has rapidly increased, while that from northern Europe has relatively declined. At the present time western Europe sends only about eighteen per cent of the total immigration, while southern and eastern Europe send nearly seventy-six per cent, most of which comes from Austria-Hungary, Italy, and Russia.

With this change in the sources of our immigration, the percentage of illiterate immigrants has greatly increased. Among Russian immigrants the percentage of illiteracy is 28.8 per cent, among the Polish 31.6 per cent, the southern Italian 54.5 per cent; while among German immigrants it is but 4 per cent, among the English 2 per cent, and among Scandinavian immigrants less than 1

per cent. The demand for the exclusion of illiterates led Congress in 1915 to pass a bill debarring aliens who could not read or write English or some other language. The measure was vetoed by President Wilson, but was afterwards passed by Congress over the veto, so that illiterate immigrants are now excluded from the United States.

One of the most serious dangers from immigration arises from the tendency of immigrants to concentrate in large cities, and from their failure to take out naturalization papers and become American citizens. This danger was brought home to us at the outbreak of the War of 1917, when we discovered that we had millions of aliens living in this country, many of whom had no thought of allegiance to the United States. About 13 per cent of the total population of our country is foreign-born; but in the urban communities (cities, towns, villages, and boroughs), 22.6 per cent of the population is foreign-born, while in the rest of the country only 7.5 per cent is foreign-born. In ten of the larger cities of the United States, the number of foreign-born inhabitants is more than one third of the total population. This concentration of immigrants has not only greatly increased the work of assimilation and education, but it has rendered vastly more difficult the many other problems which municipal governments must solve. Other important social effects of immigration relate to crime, pauperism, and insanity. Statistics show that of the criminal, pauper, and insane classes, the foreign-born furnish a much larger relative percentage than is the case with our native-born population.

466. Control of Interstate Commerce. As already pointed out, interstate as well as foreign commerce is subject to the control of Congress. By interstate commerce is meant the commerce which passes beyond the boundary of one State and enters another. Thus the term includes the transportation of goods, persons, or intelligence across State lines. While the power of Congress over interstate commerce



(By courtesy of the Commissioner of Immigration.)

UNITED STATES IMMIGRANT STATION

Ellis Island, New York Harbor.



REGISTRY FLOOR, ELLIS ISLAND IMMIGRANT STATION

Showing the spaces in which the immigrants await examination before admission.



THE CUSTOM HOUSE AT NEW YORK CITY

One of the newest custom house buildings.



Photograph by William L. Beecher

THE CUSTOM HOUSE AT PHILADELPHIA

An example of the architecture of the older buildings of this sort.

is complete, it is not exclusive as in the case of foreign commerce. Interstate commerce may be affected by police regulations adopted by the States, such as quarantine and inspection laws, designed to prevent the introduction of persons or animals suffering from contagious or infectious disease. In order that State regulations affecting interstate commerce may be valid, two conditions are essential. First, the subject must be local in its nature, and one which can be best regulated by special provisions adapted to localities. Second, State regulations even upon local subjects are invalid if the subject-matter has been covered by federal legislation — since in matters of interstate commerce, the police regulations of Congress are of paramount authority.

Federal control not exclusive

467. Instruments of Interstate Commerce. One of the most important means of promoting interstate commerce is the postal system, an exclusive monopoly of the federal government. The control of Congress over the postal service is based, not upon its power to regulate commerce, but upon its constitutional authority "to establish post offices and post roads."¹ Congress also has constitutional authority to make a government monopoly of other means of transmitting intelligence, such as the telegraph and telephone systems — an authority that was exercised in 1918 when the government took charge of the wire service of the country as a war measure.

Postal system

Money has been called the mechanism of exchange, and it is unquestionably one of the most important instruments of commerce. As we have seen, the federal government has entire control of the circulating medium, including the right to coin money, to establish a standard of value, and to declare what money shall be legal tender.

Currency

Furthermore, the power of Congress to provide a currency and to borrow money has been held to warrant the establishment of our system of national banks.

National banks

¹ Constitution, Art. I, Sec. 8, Par. 7.

The constitution vests in Congress power to fix the standard of weights and measures,¹ recognizing the importance to commerce of a uniform system. The adoption by all the States of the old English standards of weights and measures has partly obviated the need of congressional legislation. Up to the present time Congress has done little in the execution of this power, except to make permissive but not obligatory the use of the metric system.²

The power of Congress "to establish uniform rules on the subject of bankruptcies throughout the United States,"³ affects commerce to an important extent. The object of a bankruptcy law is to provide a judicial process whereby a person who cannot pay all his debts may divide his property proportionately among his creditors, and be discharged from further legal obligation.⁴

468. Railway Transportation. The period following the Civil War was marked by a rapid development of the railway industry. Many new lines were built, and an era of excessive competition followed, which proved injurious both to the roads and to the communities which they served. Between two points with a single line of railroad, rates were often exorbitant; whereas if competing lines connected two cities, the rates were sometimes below cost --- the railways compensating themselves by heavy charges between points where there was no competition. Not only were there discriminations as between localities, but lower rates were often granted to favored shippers, thus making possible the creation of monopolies in certain industries. The railroads themselves endeavored to correct some of the evils resulting from excessive competition by forming combinations or "pools," — arrangements under which all freight between certain points was

¹ Constitution, Art. I, Sec. 8, Par. 5.

² The metric system is in use throughout most of the western world except in the United States, Great Britain, and her possessions.

³ Constitution, Art. I, Sec. 8, Par. 4.

⁴ See Section 591.

to be carried at a specific rate, and the proceeds pooled or divided among the competing lines in a certain fixed ratio.

As a result of these conditions, the shippers and the public in general demanded that the government take steps to regulate the railway traffic. Since the roads were ordinarily chartered by the States, relief was first sought from the State governments; and many commonwealths established railway commissions, some of which were authorized to fix maximum rates and to prevent pooling. ^{State control ineffective} State control proved ineffective because of its geographical limitations, since State regulations did not apply to the transportation which passed beyond State lines. By 1885, the railroads were deriving more than two thirds of their revenue from the interstate traffic which individual commonwealths were powerless to control, and widespread public sentiment demanded federal regulation of interstate transportation.

469. Federal Railway Legislation. Accordingly, in 1887, Congress passed the Interstate Commerce Act. As amended by subsequent legislation, its chief provisions are as follows: (1) Discriminating rates in favor of individuals or localities are prohibited. (2) Pooling or combination for the purpose of dividing traffic is declared illegal. (3) Publicity of railroad rates is made compulsory by providing that all rates must be published and can only be changed after due notice. (4) In order to carry out its provisions, the act creates an Interstate Commerce Commission of eleven members, with power to require reports as to the operation of railroads, to hear complaints, summon witnesses, make investigations, and, under the Hepburn Act of 1906, to fix maximum rates. ^{Interstate Commerce Act}

In 1917 the federal government took entire charge of the railroads for the period of the war. Although government control was perhaps necessary as a war measure, it proved neither economical nor efficient; and the physical equipment

of the railroads depreciated greatly during this period.

Transportation Act of 1920 Congress restored the roads to their owners by the Transportation Act of 1920, which established new and important principles for the control of railway traffic.

(1) Consolidation is approved under certain conditions. The Interstate Commerce Commission is instructed to pre-

Consolidation pare and adopt plans looking toward the consolidation of the railroads of the country into a limited number of systems. Consolidation may also be undertaken on the initiative of the carriers, with the approval of the Interstate Commerce Commission.

(2) The act establishes a definite rule for establishing rates that will yield a fair return on railroad values. The

Rate making Interstate Commerce Commission is to divide the railroads of the country into several groups, and then fix such rates within these groups as will yield a return of $5\frac{1}{2}$ per cent on the value of railway properties within each group.

(3) The principle of profit sharing is introduced. If the earnings of the railroads exceed 6 per cent, the excess earnings **Profit sharing** are to be divided equally between the government and the companies making the earnings. The government's share is to be used in furthering the public service rendered by the carriers either through the purchase of additional equipment or facilities, or through loans to the railroads.

(4) A revolving fund of \$300,000,000 is created to provide loans to the railroads for extensions, betterments, and improvements. **Revolving fund**

(5) A complete system for the conciliation of labor disputes is established, embracing local adjustment boards and a central Railroad Labor Board (see page 325) to which questions relating to wages and working conditions may be referred when the carriers and their employees cannot come to an agreement. **Railroad Labor Board**

Thus while the railroads of the United States are to be owned by private capital and operated under private management, they are henceforth to be considered as a ~~private~~ ^{ownership} unified system managed by the public through its ~~and public~~ agent, the Interstate Commerce Commission. It ~~central~~ is for the Commission to say what returns the railroads shall receive, what rates they shall charge, what service they shall give, what new lines and terminals they shall build. By this latest act regulating railway transportation, the Interstate Commerce Commission is entrusted with vast powers and responsibilities; and the future of our railroads will depend largely upon the way in which that body discharges its trust.

470. **Sherman Anti-Trust Act of 1890.** One of the most important regulations of interstate commerce is the Sherman Anti-Trust Act of 1890. This law declares ~~illegal~~ ^{Provisions of act} every contract, combination in the form of trust or otherwise, or conspiracy in restraint of interstate or foreign trade. For example, the consolidation of competing railway lines through the organization of a corporation to hold and control their stock is an arrangement in restraint of interstate trade, and an illegal attempt to form a monopoly. Persons found guilty of violating the law are liable to fine or imprisonment, at the discretion of the court. From 1890 to 1914, the enforcement of this law was entrusted to the Attorney-General's office. There was no commission, as in the case of the railroads, charged with the duty of its enforcement. Suit after suit was brought by different Attorneys-General to break up illegal combinations. The result often was, that the combinations were dissolved only to reappear in different form, pursuing about the same methods. By reason of the uncertain and changing policy of government in enforcing this law, it proved impossible to secure effective regulation of large corporations.

471. **The Federal Trade Commission.** Accordingly, in 1914, Congress supplemented the Sherman Anti-Trust Act

by two measures: (1) an act creating the Federal Trade Commission; (2) the Clayton Anti-Trust Law.

Duties The Federal Trade Commission consists of five members, appointed by the President. This commission receives reports from all corporations capitalized at \$5,000,-000 or more, except common carriers. In general, its aim is to supervise the activities of large corporations so closely as to prevent unfair competition. Whenever there is reason to believe that any business is using unfair methods of competition, the commission can issue a complaint. The offending corporation will then have to show that the complaint is unfounded, or the commission will issue an order to stop the methods complained of. An appeal from this order may be taken to the Circuit Court of Appeals. The advantage to business of this method is, that the commission may promptly order men to desist from unfair practices. The courts, on the other hand, ordinarily must wait until the unfair acts are committed, and then punish the perpetrators, even though their unfair practices may have been committed in innocence of wrong-doing. Thus the Federal Trade Commission is a kind of common-sense business court, with power to regulate interstate corporations without too much red tape and delay. Besides its power to restrain unfair competition, the commission has charge of the work formerly carried on by the Bureau of Corporations.

The object of the Clayton Anti-Trust Law is to check monopoly, and tendencies toward monopoly, by specifying

**Clayton
Anti-Trust
Act** the particular acts which are in restraint of trade. This law forbids the existence of holding companies where they restrain commerce or tend to create monopoly. "Interlocking" directorates among banks with resources of more than \$5,000,000 are forbidden. The Clayton Law and the Federal Trade Commission, President Wilson declared, will give a new liberty of action to business men in the United States, and will effectually kill monopoly "in the seed."

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QUESTIONS AND EXERCISES

1. What was the amount of our foreign commerce last year? Did the exports exceed the imports?
2. From which five countries do we buy the most goods? Which five are our best customers?
3. Make a graphical comparison of our total foreign commerce with that of Great Britain, Germany, France, and Japan.
4. State the principal arguments for and against a ship subsidy.
5. Can Congress regulate navigation wholly within the boundary of a State?
6. Prepare a report upon the Panama Canal. Give an account of the acquisition of the canal zone and of the work accomplished; state how the canal will benefit commerce.
7. What amount did the federal government appropriate last year for river and harbor improvements? What part of this was for your State? Do inland cities receive any benefit from these improvements?
8. Prepare a report upon the Erie Canal, paying especial attention to its effects on our commerce.
9. Examine the map of the United States, and suggest canals which would aid commerce.
10. Name the great inland centers of commerce in the United States. Explain how the commerce and industry of each has been aided: (a) by canals; (b) by rivers; (c) by railroads.
11. Has the commerce of your city been aided by any of these means of transportation?

12. May Congress prohibit all exportation of goods from the United States?
13. What percentage of imports are admitted free? What are the principal articles on the free list? What articles furnish most of the tariff revenues? On what articles are the highest rates levied?
14. After the protected industry has become firmly established, is it wiser to increase or decrease the rate of duties? Do high protective duties encourage the formation of trusts?
15. Name the articles of commerce which can be readily produced in the United States. Those which cannot be easily produced here. Of the latter, which ones are on the free list?
16. Why do business men object to frequent changes in tariff rates?
17. What is the present attitude of each of the political parties with regard to the tariff?
18. Prepare a report upon the enactment, chief provisions, and political results of the Payne-Aldrich Tariff Act. (Kaye, P. L., *Readings*, pp. 441-448.)
19. What is meant by reciprocity treaties? What are the advantages of such treaties? What are subsidies? Bounties?
20. How many immigrants came to the United States last year? How many were excluded?
21. What per cent of immigrants came from western Europe? From southern and eastern Europe? What was the percentage of illiteracy among the different nationalities?
22. Give arguments for and against an educational test for immigrants, such as the ability to read and write their own language.
23. May Congress prohibit the immigration of persons of a particular nationality?
24. May a State prevent immigrants from landing at its seaports? May a State prohibit the immigration of foreign-born persons coming from other States?
25. May Congress regulate commerce carried on wholly within the boundaries of a State?
26. How does our federal system of government complicate the problem of railway control?
27. Prepare a report upon the federal control of interstate commerce. (Kaye, P. L., *Readings*, pp. 483-490; Reinsch, P. S., *Readings*, pp. 507-526.)
28. Name the present members of the Interstate Commerce Commission. What is their salary? Term?
29. Is there a railway commission in your State? How do its powers compare with those of the Interstate Commerce Commission?
30. Name five great railway systems engaged in interstate commerce. How are they controlled by the federal government?
31. May Congress prohibit the consolidation of steamship companies? Of railroads?
32. May Congress forbid the transportation across State lines of goods manufactured by child labor?
33. How has our government aided the construction of railroads?
34. Discuss the economic aspects of trusts, and the best methods of regulating them in the public interests. (Jenks, J. W., *The Trust Problem*; Kaye, P. L., *Readings*, pp. 492-497; Reinsch, P. S., *Readings*, pp. 485-507.)

CHAPTER XXXII

INTERNATIONAL RELATIONS

472. International Law. International law is the body of rules concerning mutual rights and duties which civilized nations accept as binding in their dealings with one another. These rules are sometimes formally adopted in treaties or conventions, but more often are usages which by general acceptance have become obligations. For this reason international law is lacking in precision and certainty. It depends for its enforcement chiefly upon the spirit of justice and fair dealing among nations, and upon the fact that violation of its rules may lead to war. But in the United States, as in Great Britain, international law is considered a part of the law of the land, Congress being expressly empowered to define and punish offenses against it.

Definition
and en-
forcement

International law relates to the mutual rights and duties of nations in time of peace as well as war. Thus it includes such important subjects as emigration, naturalization, extradition, representation through diplomatic and consular agents, maritime jurisdiction, protection of citizens and aliens, treaties and conventions of all kinds, and arbitration. Within its scope are also included such questions as the rights and duties of neutrals in time of war, *e.g.*, recognition of belligerent rights, rules governing blockades, sieges, privateering, maritime captures, mediation, and intervention.

Scope

473. Federal Control of International Affairs. Under our constitution, control of international affairs is vested exclusively in the federal government, the States being expressly prohibited from participating in this function.

Thus the constitution gives the President and Senate sole power to make treaties; grants Congress authority to regulate commerce with foreign nations, to punish offenses against international law, to declare war, to raise and support armies, and maintain navies; and finally, it vests in the federal courts jurisdiction over all cases involving foreign affairs.

474. History of American Foreign Policy. Largely owing to the fortunate isolation of the United States from the field of European politics, foreign affairs have occupied a comparatively subordinate place throughout the greater part of our history; but on the several occasions when American diplomacy has been put to the test, signal successes have been won. The history of our foreign relations commences with the Revolutionary struggle, in which the important diplomatic results were the treaty of alliance with France (1778), the commercial treaty with Holland whereby that country also recognized our independence, and finally the Treaty of Paris which ended the war (1783). The treaty of peace with Great Britain may be considered one of the greatest triumphs of American diplomacy; for the American commissioners, boldly disregarding instructions from Congress to conclude no treaty without the concurrence of the French ministry, negotiated directly with the British government, and secured terms far more favorable to the United States than were desired by our allies, France and Spain.

475. The Struggle for Neutral Rights. Throughout the years 1792–1815, Europe was in the throes of the Revolutionary and Napoleonic wars; and the constant aim of American foreign policy was to maintain an attitude of neutrality between the belligerent powers—a position rendered difficult because of the aggressions of both Great Britain and France upon American commerce. The keynote of this policy was sounded by Washington in his neutrality proclamation



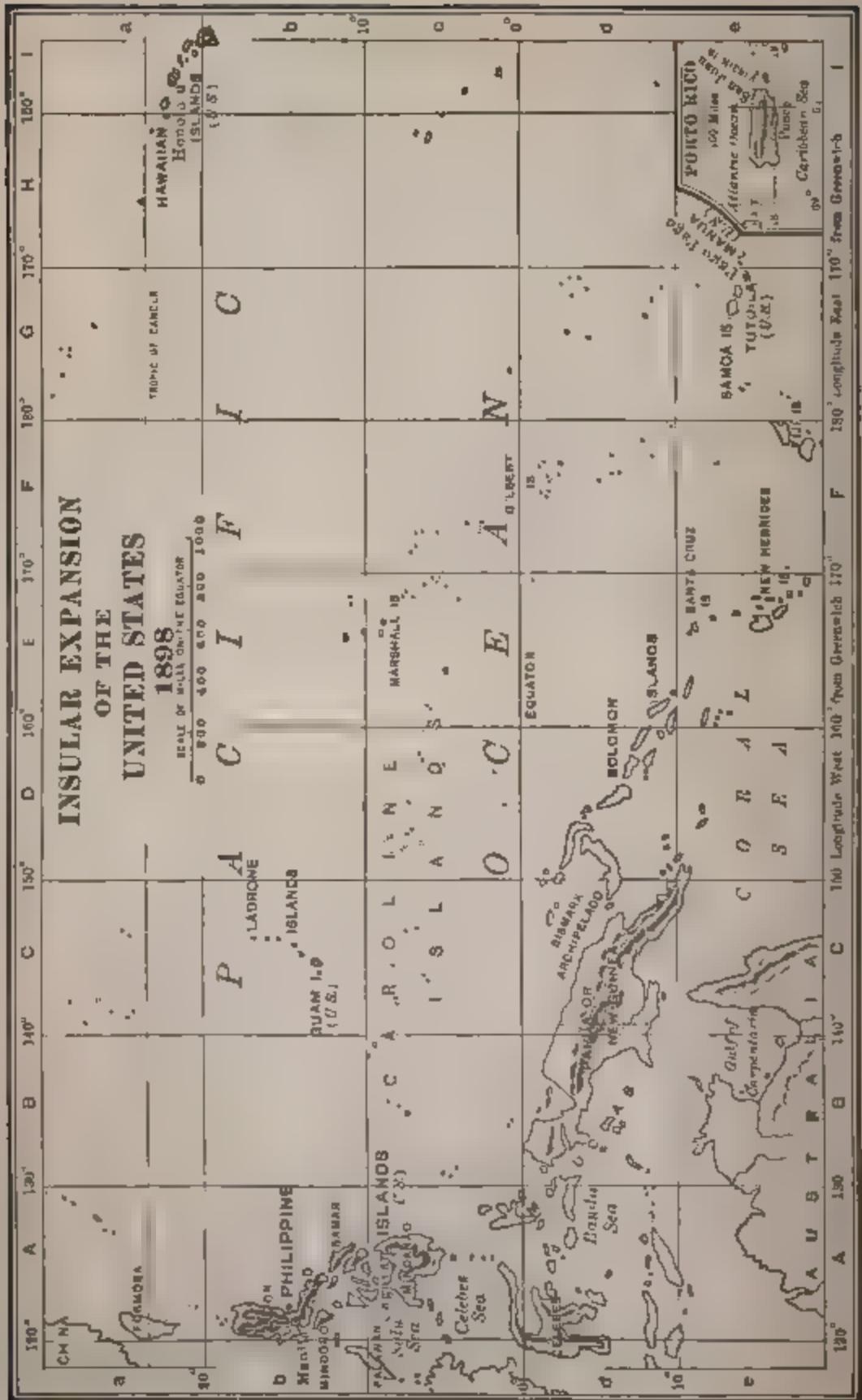
(By courtesy of the Review of Reviews Company)

THE GOVERNOR'S PALACE AT SAN JUAN, PORTO RICO



(By courtesy of the Review of Reviews Company)

INTERNATIONAL BUREAU OF THE AMERICAN REPUBLICS, AT
WASHINGTON, D.C.



(April, 1793), announcing the neutral attitude of the United States, and warning all American citizens to observe its obligations. But French depredations upon American commerce at length involved the United States in a quasi-war with that country (1790–1800); and intolerable British outrages, including the searching of American vessels and impressment of American seamen, at last precipitated the War of 1812. Although the Treaty of Ghent (1814) contained not a single provision concerning the issues which had occasioned the war, the United States had demonstrated that it would not suffer its rights as a neutral power to be violated with impunity; and since that struggle European nations have been slow to assume an aggressive policy toward this country.

476. Policy of Territorial Expansion. No results of American diplomacy during the first half of the nineteenth century were of greater importance than the several territorial acquisitions which more than doubled the national domain. Louisiana and the Floridas were peacefully acquired by purchase; but the annexation of Texas resulted in the only unjustifiable war in our history, as a result of which Mexico was obliged to cede a vast domain to the United States. Then in the closing years of the century came the Spanish-American War, resulting in the annexation of Hawaii, the Philippines, and Porto Rico. The outcome of this war marked the end of our traditional policy of isolation; henceforth the United States was to be a world power, with world-wide interests and responsibilities.

477. Foreign Affairs during the Civil War. During the Civil War, foreign relations were more critical than at any other period in our history. The chief aim of American diplomacy was to prevent foreign recognition of the Confederacy as an independent nation, and to ward off the constant menace of European intervention. Throughout the long struggle the gov-

Important
annexa-
tions

Great Brit-
ain and
France

ernments of Great Britain and France were unfriendly to the cause of the Union; and especially in the dark days of 1862 there seemed imminent prospect of joint intervention by these two countries, or at least of their joint recognition of the Confederacy. The British government was indirectly given to understand that such recognition would result in a severance of diplomatic relations by the United States, and at length the crisis was passed in safety.

In the first year of the war, the capture of two Confederate commissioners on board the British mail steamer *The Trent* en route for England seemed likely to result in a conflict with Great Britain; but the United States government, adhering consistently to its historic policy concerning the right of search, disavowed the action of Captain Wilkes, and restored the captured commissioners to the British authorities.

From the beginning of the war, the Confederates made Great Britain a base of military operations against the Union, and their bold violation of British neutrality laws received little check from the British government, notwithstanding the earnest protest of the United States minister. Within a year after the construction of the Alabama (1862), this ship and other British-built Confederate cruisers had swept American commerce from the seas.

Not until several years after the war was redress secured, but finally, as the result of the Geneva Arbitration (1872), Great Britain paid the United States \$15,500,000 as damages for the depredations of these cruisers. The Geneva Arbitration not only settled the immediate question at issue between the two countries, but it helped to repair the breach of friendship resulting from Great Britain's attitude during the war. Not least among its results, this adjustment set the world an example of the value of arbitration as a substitute for war in the settlement of international disputes.

478. The Monroe Doctrine. In his farewell address (September, 1796), Washington announced a maxim which has since become a fundamental principle of American foreign policy — that this country will refrain from intermeddling in the political affairs of Europe. President Monroe in his celebrated message to Congress of December 2, 1823, announced the second fundamental principle — that the United States will not tolerate intervention in American affairs on the part of European nations.

At the time when the Monroe Doctrine was formally announced, it seemed probable that the European powers united in the Holy Alliance would endeavor to reestablish the Spanish dominion over the South American countries which had practically achieved their independence. In his famous message President Monroe laid down two principles of the greatest importance: First, "that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers." Second, with regard to the Spanish-American states which had asserted and achieved their independence, that "we could not view any interposition, for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States."

In its essence the Monroe Doctrine is thus a declaration of home rule — America for the Americans. On numerous occasions in our history, its principles have been invoked, notable instances being the protest of the United States against Spain's contemplated transfer of Cuba to either Great Britain or France (1825), during the insurrection in Yucatan (1848), on the occasion of the occupation of Mexico by French troops and the establishment of an empire supported by French bayoneta (1862-1866),

Maxims of
Washing-
ton and
Monroe

Monroe
Doctrine

Applia-
tions

at the time of De Lesseps' unsuccessful attempt to construct a Panama canal (1880), and finally in the interposition by President Cleveland during the controversy between Great Britain and Venezuela over the boundary of British Guiana.

The Monroe Doctrine does not prevent foreign powers from using armed force to compel the payment of debts due to their citizens from Latin American countries. But since the forcible collection of debts is likely to result in a permanent occupation of the territory of the debtor country, the United States has found it expedient to assume a limited protectorate over Cuba, Haiti, Santo Domingo, and Nicaragua (1899-1916). In other words, we have undertaken to supervise the financial affairs of these countries in such a way as to make it unnecessary for foreign powers to intervene.

479. Neutral Rights and Democracy attacked by Germany. In 1914, Germany inaugurated her struggle for world dominion by invading neutral Belgium and France; and for two years and eight months

^{American neutrality, 1914-1916} the United States faced the difficult problems of neutrality in the great world war. The chief trouble, as during the Napoleonic wars, was with regard to our trade on the ocean. The United States tried to maintain the right of our citizens to trade with any of the countries at war, subject to the rules of international law. Under these rules, our ships had a right to the freedom of the seas provided they did not carry contraband of war, or attempt to break an established blockade. Even if they did either of these things, the penalty was seizure of the ship only, while the crews must be given an opportunity to save their lives. But from the outset, Germany disregarded international law on the ocean just as she had done on land by invading neutral Belgium.

Not until German submarines had sunk sixteen of our neutral ships, with the loss of over two hundred American

lives, did the United States take up arms to defend its national rights (April 6, 1917). Three reasons made this decision imperative:—

(1) Because of the renewal by Germany of her submarine warfare in a more violent form than ever before, resulting in the loss of American lives and property on the high seas. As in the War of 1812, the United States had to defend the principle that the deck of an American ship is the same as American soil, and that the flag which floats over the ship protects the lives of the men beneath it.

(2) Because of the menace to the Monroe Doctrine and to our own independence, resulting from the ambitions of a war-mad Germany. If we had stayed out of the war, the Monroe Doctrine would have become an empty threat before a victorious Germany. A power which treated its solemn promise to observe the neutrality of Belgium as a mere "scrap of paper" could hardly be expected to regard our Monroe Doctrine seriously. Indeed, the Kaiser himself had already told our Ambassador Gerard: "I shall tolerate no more nonsense from America after this war."

(3) Because the European war had become a conflict between democratic nations on the one hand, and autocratic nations on the other. Germany had trampled under foot the law of nations; an international desperado, she threatened the freedom of the world, opposing her policy of might and force against the principles of right and humanity. "The world," as President Wilson said, "must be made safe for Democracy." Little Belgium had a right to its own national life, the French people had a right to live in peace, American citizens had a right to travel on the ocean highways of the world, free from the haunting terror of German ruthlessness.

480. Arbitration. Disputes often arise between nations which cannot be settled through the ordinary diplomatic

channels; and arbitration has been devised as a pacific means of adjusting such differences and of avoiding war, the ultimate and most terrible method of redress. Arbitration tribunals may be either temporary or permanent, and in either case are usually constituted by treaty between two or more countries, each agreeing to refer serious matters of dispute to arbitration, and to abide by the award. In modern times economic motives as well as humanitarian considerations have led to the employment of this method to an extent hitherto unknown; thus in the nineteenth century there were over one hundred and thirty important cases of arbitration. In both the number of arbitrations and the importance of the questions involved, the United States and Great Britain have led the world, the Geneva award of 1872 still forming a landmark in the history of arbitrations.

The year 1899 was marked by the establishment at The Hague of a permanent court of arbitration. This tribunal ^{The Hague} is composed of members chosen from a permanent Court list of arbitrators nominated by the nations concerned. The first resort to this tribunal was made by the United States and Mexico in 1902, and since that time The Hague Court has been the means of settling many international disputes.

481. Foreign Intercourse. Intercourse with foreign nations is carried on through two classes of agents belonging ^{Diplomatic and consular service} either to the diplomatic or the consular service. Broadly speaking, diplomatic agents have charge of international affairs of a political nature, while consular agents are chiefly concerned with those of a business or commercial character. The official head of both diplomatic and consular services is the President; but in matters of foreign affairs he ordinarily acts through the Secretary of State, who personally directs our foreign policy in accordance with the instructions and advice of his chief.

482. Diplomatic Representatives. The diplomatic representatives of the United States are of two classes: (1) ambassadors, and (2) ministers plenipotentiary. ^{classes} In all, the United States has diplomatic representatives in forty-seven foreign countries. Representatives of highest rank, or ambassadors, are sent to fourteen countries;¹ while in the others, our representatives have the rank of ministers plenipotentiary.

The President appoints diplomatic representatives (subject to confirmation by the Senate); and he may remove them at his discretion. The term of foreign representatives is not fixed by law, and many changes occur when a new President assumes office. No constitutional or statutory qualifications are prescribed for those who serve in this capacity; but appointees are generally men of considerable training in public service.

The salary of ambassadors is \$17,500; ministers plenipotentiary receive from \$10,000 to \$12,000; secretaries of legations from \$1200 to \$3000. These salaries ^{Salary} are small in comparison with those paid by other countries for similar service; and the cost of heading a legation at the most important capitals is so great that only men of independent means can afford to accept the appointment.

The duties of our representatives in foreign countries are in general to safeguard and advance American interests in every possible way. They are to cultivate friendly ^{Duties} relations with the power to which they are accredited; in case an American citizen is unlawfully treated, it is for them to seek redress; and not infrequently they are called upon to negotiate treaties under the personal direction of the Secretary of State.²

Our representatives abroad are accredited to the rulers

¹ Argentina, Austria, Belgium, Brasil, Chile, France, Germany, Great Britain, Italy, Japan, Mexico, Russia, Spain, and Turkey. At present (1920) we have no ambassadors in the following countries: Austria, Germany, Mexico, Russia, and Turkey.

² For the treaty-making power, see Section 870.

of the various powers, and foreign representatives in the **Recognition and recall** United States to the President. A government may refuse to recognize in a diplomatic capacity any individual who for special reasons is offensive (*persona non grata*). In such case a new appointment must be made, or as a mark of displeasure the post may be left in charge of a subordinate.¹ So, too, any country may demand the recall of a minister who has made himself obnoxious to its government; or in exceptional cases, may summarily dismiss him.²

Diplomatic representatives enjoy important privileges and immunities, partly owing to the fact that they are the **Privileges and immunities** direct representatives of sovereign powers, partly because the important functions which they perform demand complete independence of action. The more important of these immunities are: (1) Exemption of the person of the minister from local jurisdiction, civil and criminal. In other words, he is not liable to arrest for any reason whatever, an exemption shared to a certain extent by his family and suite. (2) Inviolability of his residence, papers, and effects from any search or seizure. (3) Exemption of his personal belongings from taxation. (4) Entire freedom of worship for himself and his suite. These privileges result from the principle known to law as ex-territoriality; that is to say, by a legal fiction, the minister is supposed to carry with him the jurisdiction of his home government over his person and residence, excluding to this extent the foreign jurisdiction.

483. Consular Officers and Agents. Consular officers, **Classes and salary** the second great class of foreign representatives, are charged with the special duty of advancing the commercial interests of the United States. The principal

¹ In 1885, Italy and Austria successively declined to receive the minister appointed by President Cleveland.

² The most famous instance in our history was the dismissal by President Washington of the French agent, Genet. A less noted case was the dismissal of the British minister to the United States on account of his indiscreet utterances concerning the presidential election of 1858.

consular officers are consuls-general, consuls, and commercial agents. Consuls-general are ordinarily sent to foreign capitals. Generally they have supervisory authority over the consuls in the country to which they are sent, and they often serve as consuls in the city where they reside. The salaries of consuls range from \$2000 to \$8000; those of consuls-general from \$4500 to \$12,000.

Consular officers, like diplomatic representatives, are appointed by the President subject to confirmation by the Senate. Until recent years, any consular officer could be removed by the President at will, and appointments were generally given to those who had made themselves useful in political campaigns. This policy greatly impaired the efficiency of the service; and finally, by executive orders issued in 1906 and 1909, a merit system was established for the consular service (also in the lower grades of the diplomatic service). Original appointments are made from persons whose qualifications have been tested by a non-competitive examination. Promotions are made on the basis of ability and efficiency, as shown in lower grades of the service.

Although consuls are not entitled to the immunities of diplomatic representatives, most countries provide by treaty that they shall not be subject to arrest in civil cases, or to the seizure of their archives.

The duties of consuls pertain chiefly to commerce and trade; for example, they certify invoices of merchandise shipped to the United States; advise the home government of any infraction of treaty regulations; and report periodically upon economic conditions in the country where they reside, paying especial attention to possible expansion of United States commerce. They also aid distressed American seamen who are ill or stranded in foreign ports; act as notaries for the authentication of various legal documents; certify to marriages, births, and deaths among Americans living within their respective

Appoint-
ment and
tenure

Immunities

Duties

consular districts; visit and in certain cases issue passports; aid in enforcing our immigration laws; and in general "stand as protectors and advisers of their countrymen in foreign lands."

Consuls also perform certain judicial functions. They investigate and arbitrate differences between masters and crews which have occurred on American ships on the high seas; and in a number of countries, including Madagascar, China, Siam, and Persia, our consuls have jurisdiction in both civil and criminal cases involving American citizens.

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QUESTIONS AND EXERCISES

1. Prepare a report upon the treaty of alliance with France (1778).
2. Discuss the Treaty of Paris (1783).
3. Discuss the origin, applications, and present status of the Monroe Doctrine. (Consult Foster, J. W., *A Century of American Diplomacy*.)
4. Prepare a report upon the diplomacy of the Civil War.
5. Discuss the French occupation of Mexico.
6. Give an account of the Alabama claims.
7. Report upon the rights and obligations of neutrals in time of war.
8. Has the Senate the right to be consulted before beginning treaty negotiations?
9. Give an account of the proposed arbitration treaty with Great Britain in 1897. Why was it rejected by the Senate?

10. May the House of Representatives refuse appropriations necessary to carry out a treaty?
11. May a treaty be superseded by a statute? A statute by a treaty?
12. May a State be compelled to observe the provisions of a federal treaty?
13. Give an account of the annexation of Hawaii.
14. Name several of our most important treaties, and state what questions were decided.
15. Name some of our greatest diplomatic successes.
16. Name several of the greatest ambassadors who have represented the United States abroad.
17. Name our present ambassadors to France, Great Britain, Italy, and Russia. Name the ambassador sent by each of these countries to Washington. Are there any foreign consuls in your city?
18. Describe fully the peace conference at The Hague. What influences are now at work for international peace? What are the chief obstacles in the way of the realization of this ideal?
19. Describe the efforts to improve our foreign service through the application of civil service rules. (Reinsch, P. S., *Readings*, pp. 651-675.)

CHAPTER XXXIII

TERRITORIAL FUNCTIONS

484. Territorial Power under the Constitution. For several years prior to the adoption of the constitution, the **Confederation government had been in possession of a vast domain west of the Alleghanies to which the individual States had surrendered their claims.** This condition naturally suggested the provisions of the federal constitution relating to territories and the admission of new States. Accordingly the constitution vests in Congress power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States"; and under certain limitations, to admit new States to the Union.¹

The constitution itself is silent in regard to the power to **acquire new territory;** but annexations have been made repeatedly throughout our history, until to-day this right is as firmly established as though expressly granted.

485. Expansion of the National Area. Since the origin of the federal Union in 1789, the United States has expanded its boundaries, and its original area of 892,135 square miles has been increased to 3,743,306 square miles at the present time. The various annexations by which this enormous increase has been made are as follows:—

(1) In 1803 the vast territory known as Louisiana was purchased from France for \$15,000,000. This territory included all of the western Mississippi Valley and the isle of Orleans, an imperial area of nearly a million square miles.

¹ *Constitution, Art. IV, Sec. 3.*

(2) The second annexation was that of Oregon, the territory west of the Rocky Mountains between parallels forty-two and forty-nine degrees north latitude. Title ^{Oregon} to this region was by discovery and exploration based partly upon the voyage of Captain Gray in 1792, but chiefly upon the overland expedition of Lewis and Clark in 1805. Our title to Oregon was for a time contested by Spain, Russia, and Great Britain; and the latter country did not relinquish its claim until 1846, when the treaty was signed establishing the present northwestern boundary between the United States and Canada.¹

(3) In 1819 Florida was purchased from Spain ^{Florida} for \$5,000,000 thereby giving the United States a natural boundary on the southeast.

(4) In 1845 the independent state of Texas ^{Texas} was admitted to the Union by a joint resolution of Congress.

(5) In 1848, by the treaty which closed the Mexican War, the United States acquired the immense ^{First Mexican Cession} area south of Oregon and west of Texas, including California and what was then called New Mexico.²

(6) In 1853 the second Mexican annexation known as the Gadsden Purchase added a narrow strip in ^{Gadsden Purchase} the southern parts of Arizona and New Mexico, the consideration paid Mexico being \$10,000,000.

(7) In 1867 the vast territory of Alaska, comprising nearly 600,000 square miles, was purchased from Russia ^{Alaska} for \$7,200,000.

(8) The Hawaiian Islands, over which a protectorship had virtually existed since 1851, were annexed by a ^{Hawaii} joint resolution of Congress in 1898.

(9) By the treaty which closed the Spanish-American War (December, 1898), Spain ceded to this country Porto Rico, Guam, and the Philip-

¹ Hence 1846 is often given as the date of this annexation.

² On the map of the United States as it is to-day, this territory includes California, New Mexico, Arizona, Nevada, Utah, and portions of Colorado and Wyoming.

Porto Rico,
Guam,
Philippines

pine Islands, receiving as indemnity the sum of \$20,000,000.¹

(10) In addition to the foregoing important annexations, the United States has acquired title to a number of islands ~~Samoan and minor islands~~ of minor importance, including a few guano islands off the coast of South America and in the Gulf of Mexico; also Midway, Baker, and Wake islands in the Pacific; and (in 1899) several of the Samoan islands, the most important of which is Tutuila.

(11) For a consideration of \$10,000,000, the Republic of ~~Panama Canal Zone~~ Panama in 1904 ceded to the United States perpetual control of a strip of land extending across the Isthmus of Panama, five miles in width on either side of the proposed canal route.

(12) In 1917 the United States purchased the Danish West Indies, now called the Virgin Islands, for \$25,000,000. ~~Virginia Islands~~ These three islands were acquired chiefly for strategic reasons, since they form an important link in the chain of defense for the Panama Canal.

486. Early History of Northwest Territory. The history of the territories belonging to the United States commences ~~Western land claims~~ with the vast area north and west of the Ohio River, which in the latter part of the eighteenth century was vaguely described as the Northwest Territory.² By the Treaty of Paris (1783), Great Britain relinquished her title to this region; and the question of ownership was disputed by Virginia, New York, Massachusetts, and Connecticut, each of which laid claim to the territory either in whole or in part.

These claims were viewed with alarm by such States as Maryland, Rhode Island, New Jersey, and Delaware, themselves so situated that they could not hope to expand in any direction. Maryland took the lead in suggesting

¹ Spain also relinquished her title to Cuba, which became an independent republic, although the United States has reserved the right of intervention in case of foreign aggression or serious domestic disorder.

² Out of this territory the States of Ohio, Indiana, Illinois, Michigan, and Wisconsin have been formed.

that the western lands be formed into a public domain to be held by Congress for the common benefit of the States, and steadfastly refused to ratify the Articles of Confederation until assurance was given that this course would be adopted. Ultimately Connecticut, Virginia, and Massachusetts, following the example set by New York in 1780, ceded to the United States their claims to the region west of the Alleghany Mountains.¹

487. Early Territorial Legislation. By a resolution passed in 1780, the Continental Congress had promised that the lands ceded by the claimant States should be "disposed of for the common benefit of the United States, and be settled and formed into distinct republican States which shall become members of the federal Union." The two principles set forth in this resolution have ever since formed the basis of the territorial and public land policy of the United States.

A few years later Congress voted that a committee should be appointed to draw up a plan for the government of its newly acquired domain in the west; and accordingly Jefferson as chairman reported the plan which with some changes was adopted as the "Ordinance of 1784."

488. Ordinance of 1787. A second and more famous territorial act, known as the Ordinance of 1787, was adopted by Congress on July 13 of that year.² As an organic act this ordinance is only second in importance to the federal constitution itself, for it established firmly the principles which have since formed the basis of our territorial policy. This policy has had as its object, first, the establishment in the territories of that form of civil government which is best adapted to existing needs; and second, the preparation of the territories for their future position as States in the Union.

¹ Except the Connecticut Reserve, a strip of land along the southern shores of Lake Erie, reserved by Connecticut in aid of education.

² The Ordinance of 1787 was adopted by the Congress under the Articles of Confederation, and later re-enacted with slight changes by the first Congress under the constitution.

The ordinance provided for two stages of territorial government. A temporary government was to be first instituted, under which laws were to be made by the ~~territorial government~~ governor and three judges appointed by Congress. As soon as there were five thousand free male inhabitants of voting age in the territory, this temporary government was to be superseded by a more permanent government, representative in character. A legislature of two houses was then to be created, the upper house consisting of a council of five members appointed by Congress; while the lower branch was to be chosen for a term of two years by the voters of the territory. The legislature thus constituted had power to pass any law not repugnant to the principles of the ordinance, subject to the governor's right of absolute veto.

Representation in Congress was secured by means of a territorial delegate, chosen by the two houses of the legislature in joint assembly. This representative was to have a seat in Congress with the right to debate, but not to vote.

In addition to the provisions regulating the framework of government, the ordinance contains six articles in the nature ~~individual rights~~ of a bill of rights, and these were declared to be an unalterable compact (save by mutual consent) between the United States and the people within the territory. Among these were provisions designed to guarantee to the citizens of the territory the rights of individual liberty, such as freedom of religious worship, the benefit of *habeas corpus*, trial by jury, and judicial process according to the common law; and also the right of proportionate representation in the legislature.

The ordinance further provided that not more than five nor fewer than three States should be formed within the ~~territory~~ ~~statehood~~ territory, and promised statehood whenever any district should have 60,000 free inhabitants, or at an earlier period if found consistent with the general

interest. The constitution and government of the States thus formed were to be republican in character. The new commonwealths when admitted were to be "on an equal footing with the original States, in all respects whatever"; and were forever to remain a part of the United States.

Perhaps the most important provision, because most far-reaching in its effect, was the prohibition of slavery throughout the territory. The anti-slavery clause was ~~slavery~~ afterwards copied verbatim in the organic acts of the northern territories, and subsequently embodied in their State constitutions; and nearly eighty years later, with but slight alteration, it was adopted as the thirteenth amendment to the federal constitution.

489. Later Territorial Legislation. Since the enactment of the Ordinance of 1787, Congress has passed ~~Number of territories~~ many acts providing for territorial government, legislation made necessary by the additions to the national area. In all, twenty-nine organized territories have been created within the boundaries of the United States, while three territorial governments have been provided for the insular possessions.¹

Nearly all of these have passed through the two stages of territorial government provided for in the Ordinance of 1787. First a provisional government was established in which the people had practically no ~~government~~ voice; and this was followed as soon as conditions permitted by the establishment of representative government.

490. Representative Territorial Government. For many years prior to their admission to statehood, New Mexico and Arizona had representative territorial governments of the type which has been provided ~~Executive officers~~ for most of our continental territories.² Under this form of government, executive power is vested in a governor appointed for four years by the President with the consent

¹ The States which have never been territories of the United States include, besides the original thirteen, Maine, Vermont, Kentucky, West Virginia, Texas, and California.

² New Mexico was organized as a territory in 1850; Arizona in 1863.

of the Senate. The powers of the territorial governor are quite similar to those of the governor of a State, but he is directly responsible to the President, to whom he reports annually on the condition of affairs in the territory. Other administrative officers are the secretary, treasurer, auditor, and superintendent of public instruction.

The territorial legislature consists of two houses, an upper house or council, and a house of representatives. **Territorial legislature** Members of both branches are chosen for a term of two years by the qualified voters of the territory. The organization, procedure, and powers of the legislature are carefully regulated by federal statute, and are substantially the same as those of the legislatures of the several States. However, acts of the territorial legislature, besides being subject to the veto power of the governor, are liable to be annulled by Congress.

Judicial power is vested in a supreme and several **The judiciary** district courts, the judges of which are appointed by the President.¹ The territorial legislature has power to establish such inferior courts as are found necessary.

Each territory sends to the House of Representatives a **Territorial delegate** delegate, who has the salary and other privileges of a member, except the right to vote.

Thus the framework of government in the territories approximates closely to that which exists in the States, the **Comparison with State government** essential distinction being the subordinate position which the territory occupies in relation to the Union.² National control is at all times paramount, and is exercised through acts of Congress modifying the status of the territory, or, in exceptional cases, directly annulling the acts of its legislature. Furthermore, federal administrative control is secured through the Presi-

¹ Territorial courts are not part of the federal judicial system, but are established by Congress under its power to govern territories, and hence the judges of such courts are subject to removal by the President at his discretion.

² The territories of course take no part in the election of a President.

dent's power to appoint and remove the principal territorial officers.

491. Relation of Territories to the Union. Congress has complete and exclusive legislative power over the territories, and may establish either provisional or representative government as appears best adapted ^{Power of Congress} to local needs. Even after representative institutions have been granted, Congress may annul the acts of the territorial legislature — a power exercised in 1887 when several acts of the Utah legislature favoring polygamy were declared void.

Only during the protracted controversy over slavery (1820–1860) was the power of Congress to legislate for the territories called in question. The territorial ^{Dred Scott decision} theory of the pro-slavery party was finally adopted by the Supreme Court of the United States; and the celebrated Dred Scott decision (1857) denied the power of Congress to prohibit slavery in the territories. The Civil War, together with the thirteenth amendment, rendered this decision nugatory, and the complete power of Congress to legislate for the territories is now conceded.

492. Admission of New States. Territories are virtually inchoate or rudimentary States; and to prepare ^{conditions} them for statehood as soon as their population ^{of admission} and circumstances warrant has been the prime object of our territorial policy. Under the constitution, Congress is vested with power to admit new States into the Union; and it is for Congress to determine upon what conditions this action will be taken. Thus the new State may be required to accept certain boundaries, or to incorporate into its constitution certain fundamental provisions respecting religious freedom, and the like; and in all cases the government provided by its constitution must be republican in form.

A population at least equal to that of an average congressional district has usually been a prerequisite to ad-

mission, but the practice has not been uniform. Nevada with a population of 20,000 was admitted in order to obtain the vote of that State for the thirteenth amendment. On the other hand, Utah with a considerable population was long denied statehood because of the institution of polygamy; and New Mexico and Arizona were refused admission for many years on the ground that their population, including many persons of Mexican blood, was not prepared for self-government.

Practically the only limitation upon the power of Congress in forming States is that the new commonwealth must not include territory lying within the boundaries of a State already admitted, without the consent of the legislature of the State concerned. By express constitutional provision, territory cannot be taken from or added to any State without the consent of the States concerned, as well as of Congress.¹

In admitting new States to the Union, two different methods have been followed. Frequently Congress has passed an enabling act authorizing the people of the territory to frame a constitution and apply for admission. In other cases, the citizens of the territory, acting on their own initiative, have called a convention and framed a constitution, which, after ratification by the voters, has been submitted to Congress for approval. Either of these methods of procedure is merely a preliminary step, the final decision as to admission resting entirely with Congress.

493. Position of States after Admission. Although a new State can only be admitted upon such terms as Congress may prescribe, once in the Union it is on an equal footing with other States in all respects; and according

¹ The only case in our history of the subdivision of a State without its consent was that of West Virginia, which separated from the Old Dominion in 1861 in consequence of the ordinance of secession adopted by the State convention at Richmond. That part of the State west of the Alleghanies thereupon formed a separate government, and was admitted to the Union by Congress in 1862. Later Virginia acknowledged the validity of the creation of the new State.

to the weight of authority, may even amend its constitution regardless of conditions which have been imposed by Congress. Moreover, once in the Union a State cannot under any circumstances withdraw or secede, the Civil War having forever settled the principle that this is "an indestructible Union of indestructible States."

Immediately after the Civil War, the question arose as to the status of the eleven States which had passed ordinances of secession. Widely divergent views were held by President Johnson and Congress; but the congressional theory finally prevailed. This held that although the Southern States had never been out of the Union, their rebellion had forfeited their rights as States, and practically reduced them to the condition of conquered territory. Hence it was for Congress to determine how long this status should continue, as well as the conditions upon which the former States might be "reconstructed," and restored to their former privileges as commonwealths.

494. Territories and Possessions on the American Continent. The territories now belonging to the United States may be divided into two groups: first, the continental territories; and second, the insular territories or dependencies.

The continental territories include Alaska and the Panama Canal Zone. The District of Columbia has an unusual form of territorial government, specifically devised for the seat of the national government.

495. The Government of Alaska. For nearly half a century, Alaska remained in the first or provisional stage of territorial government; but in 1912, representative government was granted to this territory. The first legislature met at Juneau in March, 1913, and consisted of eight Senators and sixteen Representatives, elected by popular vote. The legislature meets biennially

Position
after
secession

Secession
and recon-
struction

Classifi-
cation

Continental
territories

Legislature

for a period not exceeding sixty days, and has power to pass laws not contrary to the organic act, but which may be disapproved by Congress. One of the first measures passed by the legislature of Alaska extended full suffrage to the women of the territory.

The governor is appointed by the President with the consent of the Senate for a term of four years, and has the usual powers. The judiciary consists of four United States district courts with judges appointed by the President, together with such inferior courts as may be created by the legislature of Alaska. A territorial delegate is elected biennially to represent Alaska in Congress, where he has the right to debate and serve on committees, but not to vote on laws.

496. The Panama Canal Zone. Until the opening of the canal in 1914, the district was governed by the Isthmian Canal Commission of seven members, acting under the direction of the Department of War. Since that time its government has been practically in the hands of the President, who appoints a governor for a term of four years, and other administrative officials for an indefinite term. There is no legislature; while judicial power is vested in a district court with a judge appointed by the President, and local courts whose judges are appointed by the governor of the canal zone.

497. The District of Columbia. Among the powers which the constitution confers upon Congress is the right "to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States."¹ In 1790 the States of Maryland and Virginia ceded to the United States a district ten miles square lying upon the banks of the Potomac; but the part upon the south bank was retroceded to Virginia in 1846,

¹ Constitution, Art. I, Sec. 8, Par. 17.

reducing the district to its present area of about seventy square miles.

The government of the District differs radically from that which prevails in other territories, since the residents are completely disfranchised. They have no vote in ~~Present government~~ the election of either local or national officials, nor are they represented in Congress by a delegate. Congress itself acts as the local legislature for the District, setting aside certain days each month for the consideration of its affairs.

Administrative powers are vested in a board of three commissioners appointed by the President with the consent of the Senate. One of the members is an experienced officer of the Engineer Corps of the army, detailed for an indefinite term; the other two are civilians, appointed for a term of three years. This board has large administrative powers, as well as the power of making local ordinances.

In its general outline, this plan of government resembles the commission type of city government; and in fact, the government of the District of Columbia was one of the models which the framers of the Galveston charter had before them. The affairs of the District have been managed efficiently, and Washington is one of the best governed cities in the world.

498. Other National Property. Congress has the exclusive right of legislation "over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."¹ Under this provision the federal government has acquired many sites for navy-yards, arsenals, military posts, lighthouses, post offices, customs houses, and other public buildings. Land to be used in this way is obtained by cession from the State legislature, and is thereafter exempt from State or local taxation.

¹ Constitution, Art. I, Sec. 8, Par. 17.

Under its constitutional power to regulate commerce with the Indian tribes, the federal government also exercises special jurisdiction over numerous reservations scattered throughout the West. The most extensive Indian reservations are in Arizona, South Dakota, and Montana. Reservations have always been unpopular in the States where they exist, and the system is breaking down in favor of the plan of allotting lands to the Indians in individual ownership.

499. Insular Territories or Dependencies. The insular dependencies of the United States include Hawaii, annexed in 1898; Porto Rico, the Philippines, and Guam, acquired in 1899 as a result of the war with Spain;¹ a few islands of the Samoan group acquired by treaty in 1900; three small Pacific islands — Wake, Midway, and Baker, claimed by right of discovery since 1898; and the Virgin Islands, purchased from Denmark in 1917.

Of these dependencies, Hawaii, Porto Rico, and the Philippines possess representative territorial governments quite similar to the plan under which most of our states were governed before they were admitted to the Union. Such minor dependencies as Guam, the Virgin Islands, and the Samoan Islands are under the control of the naval officers in command of the naval stations; while Midway, Baker, and Wake Islands require no government, being practically uninhabited.

500. The Territory of Hawaii. Hawaii is governed under an act of Congress passed in 1900. This act extends to the territory the provisions of the federal constitution and laws not locally inapplicable, and confers citizenship in the United States upon citizens of Hawaii. The President appoints the governor; and this officer, with the advise and consent of the territorial senate, appoints for a four-year term the principal administrative officials.

¹ These islands were occupied by the United States forces in 1898; the treaty with Spain under which they were ceded was ratified April 11, 1899.

The legislature consists of a Senate of fifteen members elected for a term of four years, and a House of Representatives of thirty members elected for two years. ^{Legislature} The right to vote is restricted to citizens of the United States who have resided in the territory for one year, and who are able to read or write either the English or the Hawaiian language. This educational qualification was intended to eliminate the Chinese and the Japanese, large numbers of whom are living in the islands.¹

Hawaii is represented in Congress by a delegate elected by the voters of the territory for a term of two years. As in the case of other territorial delegates, he has ^{Territorial delegate} a seat in the House of Representatives, but has no vote.

501. Government of Porto Rico. Porto Rico was governed by the War Department from its occupation by General Miles in 1898 until the establishment of a civil government by an act of Congress passed in 1900. This act continued in force until 1917, when a new law was passed for the government of the island. The Porto Ricans were then made citizens of the United States, and were granted a larger share in their own government.

Executive power is vested in a governor, appointed by the President, and in seven administrative officers: a secretary, attorney-general, treasurer, auditor, commissioner of the interior, commissioner of education, and commissioner of public health, charities, and corrections. Two of these administrative officers are appointed by the President, the others by the governor of the territory. The legislature consists of two houses, a Senate and a House of Delegates, the members being elected by popular vote. ^{Executive and legislature}

The judicial system consists of a supreme court of five justices appointed for life by the President; seven district

¹ Immigration from China and Japan to Hawaii is now prohibited in the same manner that immigration from these countries to the United States is prohibited.

courts, each presided over by a judge appointed by the governor for a term of four years; and twenty-four municipal courts whose judges are elected by the voters for a term of two years.

A complete system of local government has been established by the Porto Rican legislature for the municipalities, the voters electing the mayor and council.

Representation at Washington is secured through the election by the qualified voters of a commissioner, who is chosen for a term of two years.

502. Government of the Philippine Islands. The problem of establishing a suitable government for the Philippines has proven a difficult one, since these islands are inhabited by races in almost every stage of development from savagery to civilization; and the task was rendered still more difficult by the insurrection waged during the early years of the American occupation. The present government is in accordance with an organic act passed by Congress in 1916, and consists of a central government over the entire archipelago, with subordinate provincial and municipal governments.

The executive department consists of the Governor General, the Vice Governor, the heads of the executive departments, and an auditor. The Governor and Vice Governor are appointed by the President with the consent of the Senate, while the heads of the executive departments are appointed by the Governor General.

The legislature consists of two houses, a Senate of twenty-four members and a House of Representatives of ninety members. As a rule, members of both houses are elected by a restricted suffrage; but two senators and nine representatives are appointed by the Governor General to represent the non-Christian tribes of the islands.

Judicial power is vested in three classes of courts, a supreme court whose justices are appointed by the President; a court of first instance (general jurisdiction) in each province; and justices' courts in the municipalities, the judges of the last two courts being appointed by the governor.

Local government varies according to the stage of civilization of the various provinces. Many of these have a governor, elected by the municipal councils of the ^{Provincial} province; and the governor with several ^{government} appointive officials constitute a provincial board, which exercises administrative powers in the province.

In the municipalities there is a mayor and municipal council, the members of which are elected for a term of two years by the qualified voters. The city of Manila ^{Municipal} is governed under a special charter creating a ^{government} plan of government modeled on that of the District of Columbia.

The Philippines are represented in the United States by two commissioners, chosen not by popular vote ^{Representation} as in the other territories, but by the legislature.

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QUESTIONS AND EXERCISES

1. Prepare a report upon the territorial growth of the United States.
2. On an outline map of the United States mark off with different colors the various territorial annexations.
3. Describe the territorial policy of the United States.
4. Discuss the influence of the Ordinance of 1787; (a) upon local self-government; (b) upon slavery; (c) upon education.
5. Discuss the method of admitting a State into the Union.
6. Give an account of the Louisiana Purchase. What States were formed out of this territory?
7. What States, besides the original thirteen, have never been national territories?
8. Under the provisions of the constitution, could Texas be divided into four States? Could Indiana and Illinois be united into a single State?
9. Bound your State. Has it ever been part of, or has it ever included, another State?
10. How did your State receive its name? Its nickname?
11. When was your State admitted to the Union? Describe its territorial government prior to admission. How long was it an organized territory? Give a history of the steps by which admission was secured.
12. What restrictions has Congress imposed upon States as a condition to admission? Were any imposed upon your State? Are these conditions still binding?
13. Why was the capital of the United States placed under the exclusive control of Congress? Why was the present form of government established for the District? What political rights are denied to residents of the District?
14. Describe the city of Washington — street plan, principal public buildings and places of interest, monuments, and surroundings.
15. Name any public buildings, forts, or reservations in your community which belong to the federal government.
16. What degree of local self-government has been granted to our insular possessions? Why were not political rights accorded to them as promptly as in case of our continental territories?
17. Is there any likelihood that our insular possessions will ever be admitted as States?
18. Discuss some of the problems arising from the annexation of the Philippines. In your opinion, should complete independence be granted to the Philippine Islands?

CHAPTER XXXIV

MILITARY FUNCTIONS

503. War Powers of the Federal Government. The constitution entrusts the war power to the federal government, the States being absolutely prohibited from keeping troops or ships of war in time of peace, or from engaging in war unless actually invaded or in imminent danger. The military powers vested in Congress by the constitution include the right (1) to declare war; (2) to grant letters of marque and reprisal; (3) to make rules concerning captures on land and water; (4) to raise and support armies; (5) to provide and maintain a navy; (6) to make rules for the government and regulation of the land and naval forces; and (7) to organize, arm, and discipline the militia.¹

Important military powers are also entrusted to the President, since he is commander-in-chief of both army and navy, has power to call out the militia under certain conditions, and may make treaties with the advice and consent of the Senate.

President's
military
authority

504. American Wars. The important wars in which the United States has been engaged are as follows: (1) Revolutionary War, from April 19, 1775, to April 11, 1783; (2) War of 1812 with Great Britain, June 18, 1812, to February 17, 1815; (3) War with Mexico, April 24, 1846, to May 30, 1848; (4) the Civil War, April 12, 1861, to May 26, 1865; (5) War with Spain, April 21, 1898, to April 11, 1899; (6) War with Germany, declared on April 6, 1917.

The United States has also been involved in many minor wars. These include a protracted series of Indian conflicts;

¹ Constitution, Art. I, Sec. 8, Pms. 11-14.

the naval war with Tripoli from 1801 to 1805; a quasi-war with France from 1798 to 1800; and finally, the Philippine insurrection from 1899 to 1902.

505. The Declaration of War. A formal declaration of war is sometimes made at the outbreak of hostilities between two countries, this declaration serving as a public notice of the existence of war, and imposing upon other nations the obligations of neutrality.¹ The declaration is usually preceded by the dismissal of the respective ambassadors, thus severing diplomatic intercourse between the two countries. The right to declare war necessarily includes the power to wage war by every means known to any nation, subject only to the limitations prescribed by international law.

506. Letters of Marque and Reprisal. Letters of marque and reprisal are commissions authorizing "persons who are not in the regular service of the country to exercise the public power of warring upon and capturing vessels of the enemy upon the high seas."² In other words, such letters are commissions which license privateering. Most of the great powers except the United States have subscribed to the Declaration of Paris (1856), abolishing privateering as a means of waging war. Privateering was extensively used in the War of 1812 against Great Britain, but no privateers were licensed during the Spanish-American War.

507. Captures on Land and Water. The power to make rules concerning captures on land and water authorizes Congress to regulate the disposition of all property captured in time of war. Such captures may consist either of the persons or property of the enemy, or of neutral ships or goods taken while violating the rules of war; e.g., when neutral ships attempt to enter a port declared by one of the belligerents to be in a state of block-

¹ Declarations of war were made by Congress at the outbreak of the War of 1812 and the Spanish American War; while in 1846 Congress passed an act declaring that "by the act of the Republic of Mexico a state of war exists between that government and the United States."

² Tucker, J. R., *The Constitution of the United States*, II, 578

ade.¹ In the exercise of its authority concerning captures, Congress has enacted a complete code of prize regulations, and has established a system of prize courts. Congress may also enact temporary regulations for the government of territory of the enemy occupied by the forces of the United States, such territory being subject to final disposal through the treaty-making power vested in the President and Senate.

508. Power to raise and support Armies. The constitution vests in Congress power "to raise and support armies," subject to the provision that "no appropriation of money to that use shall be for a longer term than two years." This limitation was designed as a check upon possible abuse of power by the President as commander-in-chief. Since army appropriations must be made every two years, the military branch of the government is completely dependent upon the will of Congress.

The right to raise armies authorizes Congress to employ all means by which troops may be raised, even including a conscription or draft. "Supporting" armies and "maintaining" navies includes not only provision for food, clothing, transportation, equipment, and medical care of troops; but also authorizes the construction of forts, coast defenses, barracks, arsenals, depots, coaling and naval stations and yards. In fact, this clause empowers the federal government to employ all necessary and proper means which will further the country's defense — it may manufacture arms and ammunition, build ships, educate officers in military and naval science, organize war and navy departments, provide for the payment of bounties and pensions, and may even construct railways as a means of facilitating the transportation of troops and matériel of war.

Throughout our history the standing army has been

¹ During the Civil War, about fifteen hundred vessels were captured or destroyed while entering or leaving blockaded ports.

small except during actual war. Until 1898 the army on a peace footing numbered less than 27,000 men; but in 1901, shortly after the war with Spain, the President was authorized to increase the army at his discretion to a maximum of 100,000 men. Again in 1916, Congress authorized an increase in the regular army to a maximum of about 250,000 men, but it proved impossible to recruit the army to its authorized strength. In time of peace the army is recruited out of volunteers between the ages of eighteen and thirty-five who succeed in passing a rigid physical examination. The ordinary peace duty of the army is to garrison military posts and stations, protect government property, and serve as a reserve force in case of disturbances with which State authority cannot cope.

In time of war, troops may be raised in three ways.

(1) By enrollment of volunteers, as in time of peace.

Recruiting in time of war (2) The President may call upon the States to furnish troops, under his power to call out the militia.

(3) By conscription or draft, that is, the selection of men by lot for compulsory military service. The first two methods have been employed in nearly all of the important wars in which the United States has been engaged; drafting or conscription was resorted to during the Civil War, and during the War of 1917.

509. **Conscripting a National Army.** As in the case of all our previous wars, the United States was almost wholly

Our lack of preparedness unprepared in April, 1917. This was especially true of our army, which was so small and so poorly equipped that Germany looked upon it with

contempt. Our regular army numbered only about 150,000 men, and we had no well-trained reserves, for our people had never favored universal military training. We had scarcely enough uniforms even for this small force, while there was a sad lack of rifles, machine guns, artillery, airships, and all the instruments of modern warfare. Congress and the President now set earnestly at work to organize

the nation for war, and within a year great results were achieved. In May, 1917, Congress passed a law which created a new National Army, to be chosen by draft out of all the able-bodied men in the United States between the ages of twenty-one and thirty years, inclusive. In the following June, 9,650,000 young men presented themselves for registration for war service; it was decided that the first installment to be called out in 1917 should number 687,000, and that about the same number should be called in the year 1918.

Nearly all of these men were without military training; so it was necessary to establish a number of immense camps where the men drafted for the National Army ~~canton-~~^{ments} could be assembled, and receive some training for the stern work ahead of them. Within a few months, sixteen cantonments, or great army camps, were constructed at different points throughout the United States. Each cantonment was really a complete city by itself, including nearly a thousand different buildings, with a total capacity of forty thousand men. The entire National Guard was also called out, recruited to its war strength of 450,000 men, and sent into great tented camps. The regular army was increased by voluntary enlistment to 360,000 men; and by the close of the year 1917, nearly 1,500,000 soldiers were bearing arms for the United States.

On May 31, 1918, the House of Representatives passed the largest annual army appropriation bill in history, and sent the measure to the Senate. This bill appropriated \$12,041,682,000, and was designed to provide ~~military ap-~~^{propriations} for an army of three million men during the ~~in 1918~~ coming year, in accordance with the government's revised program for rushing soldiers to France. Some of its big items were: \$6,315,135,000 for the quartermaster corps; \$3,396,000,000 for ordnance; \$1,028,000,000 for the engineers; \$990,250,812 for aviation; and \$267,000,000 for the medical corps.

510. Officers of the Army. The President is commander-in-chief of the army; and under him as acting head of the administration is the Secretary of War. The grades of officers are general and lieutenant-general (titles given as honorary distinction in recognition of signal services); major-general, brigadier-general, colonel, lieutenant-colonel, major, captain, first and second lieutenant. The salaries of officers range from \$8,000 for major-general down to \$1700 for second lieutenant, with fixed increases after a certain length of service.

Officers are appointed by the President subject to confirmation by the Senate. Most of the higher officers are graduates of West Point; but in some cases they are appointed directly from civil life, and not infrequently men from the ranks are promoted to commands. Neither army nor naval officers may be removed in time of peace except by court-martial; but in time of war the President may remove summarily. Provision is made by law for the compulsory retirement of officers who have reached the age of sixty-four, and for their voluntary retirement after forty years of service. Retired officers receive for the remainder of their lives three fourths of the pay of their rank at retirement.

511. Education of Officers. The necessity of professional training for military officers was realized at an early date, and in 1802 Congress authorized the establishment at West Point, New York, of the Academy which has since become one of the famous military schools of the world.

Under the present plan, each Senator, each congressional district, and each territory is entitled to one cadet at West Point, appointed by the Secretary of War upon the nomination of the Senator or Representative concerned. In addition, forty cadets are appointed at large by the President, these appointments being commonly given to the sons of army or naval officers.

Appointees must be between the ages of seventeen and twenty-two years, and must pass a thorough physical and mental examination, the latter including the common branches, also the subjects usually given in the first two years of the high-school course.

The course of instruction requires four years, and is chiefly mathematical and professional. Each cadet is paid by the government \$700 per year, a sum about ^{Course of} sufficient for his support. Only one leave of absence ^{instruction} is allowed during the four years, and this is granted at the end of the second year. Academic duties continue from September first to June first, the intervening months being spent in camp, where practical military training is given. Upon graduation cadets are commissioned as second lieutenants in the United States Army.

Besides the Academy at West Point, the United States maintains several schools for more advanced military training. These include the War College, the Engineer School, and the Army Medical School, at Washington, D.C.; the Army Service Schools at Fort Leavenworth, and the Mounted Service School at Fort Riley, Kansas; the Field Artillery School at Fort Sill, Oklahoma; the Coast Artillery School at Fortress Monroe, Virginia; garrison schools at each military post for the instruction of officers; and schools for the instruction of enlisted men, both in the common branches and in military subjects. Valuable military training is also given in the State universities and agricultural colleges.

512. Militia. On account of the traditional distrust of a standing army, the United States has always relied largely for its defense upon the militia, or citizen soldiery. This reliance has proved a vain one in every war in which the United States has been engaged. Our history proves conclusively that only national troops under exclusive national discipline and control are adequate for national defense. Ignoring the lesson of history,

<sup>Army Act
of 1916</sup>

the Army Reorganization Act of 1916 placed its reliance for second-line defense upon the old militia system, revamped so as to provide for a larger degree of federal control.

Our national constitution provides that the President may call out the militia for three purposes, namely: to execute the laws of the Union, suppress insurrection, and repel invasion. Under this clause the President has no authority to send the militia outside the borders of the United States. The new militia act removes this restriction, authorizing the President to draft the State militiamen into the national service whenever Congress declares this necessary. In return for the surrender of their constitutional right to control their militias, the States are to divide an annual federal subsidy of \$50,000,000. National guardsmen enlist for six years, three in the active organization, and three in the reserve.

This plan in effect provides for forty-eight little standing armies under dual control, that of the nation and the State. The inherent weakness of the militia system is that, like anything short of universal training, it distributes the military burden unequally; and it always breaks down in practice. For example, in 1916 the theoretical strength of the national guards in all the States was nearly 200,000 men. Two weeks after the President's call, only 45,000 badly equipped militiamen had started for the Mexican border, and a large number of these were raw recruits who had never fired an army rifle.

On four occasions — the Whiskey Rebellion (1794), the War of 1812, the Civil War, and the War of 1917, — the militia were called out by the President. In the Civil War President Lincoln issued three calls for the militia as such, to the aggregate number of 475,000 men.

513. **The Navy.** Notwithstanding its splendid services

In the War of 1812, and in the earlier struggle with the Barbary pirates (1801-1805), the American navy ^{History of navy} remained small and neglected throughout the greater part of our history. Finally in 1882 came a change in policy, and in the following year many new vessels of the most approved type were constructed. The wisdom of maintaining an adequate navy was proven in the war with Spain, when the new navy first demonstrated its efficiency as a fighting force. Since that war the program of expansion has continued, until to-day the American navy is one of the most powerful in the world, being second only to that of Great Britain.

On entering the World War in 1917, a great expansion of our navy was necessary in order to protect our troops while crossing the ocean, and to aid in hunting ^{Expansion in 1917} down the enemy's submarines. The number of men in the Navy and Marine Corps was increased to 250,000; while every battleship and cruiser was fully manned, and thousands of expert gunners were placed on board American merchantmen. Contracts were let for the construction of hundreds of naval vessels of every type, from superdreadnoughts to submarine chasers. Many privately owned vessels, yachts, and fast motor boats were taken over by the government and transformed into patrol boats, submarine chasers, and mine sweepers. The German merchant ships and liners which had taken refuge in American ports were seized and made ready for the transportation of troops and supplies. Within a month after war was declared, United States destroyers and battleships were in European waters, prepared to coöperate with the fleets of Great Britain and France. "When will you be ready for business?" asked the British commander as our flotilla arrived off the British shores on May 4. "We can start at once," replied the American admiral. "We made preparations on the way over. That is why we are ready."

The official head of the navy is the President as com-

mander-in-chief, next in authority being the Secretary, of Department organization the Navy. The department organization includes eight bureaus for the management of the various branches of naval administration. Of these the most important is the Bureau of Navigation, which has charge of the personnel of the service and the direction of the fleet. Strategical and tactical matters are under the control of a General Board, corresponding to the General Staff of the Army.

The grades of officers in the line of the navy are admiral, vice-admiral, rear-admiral, captain, commander, lieutenant-commander, lieutenant, lieutenant (junior grade), Officers and ensign. Salaries of officers range from \$18,-500 for admiral down to \$1700 for ensigns, with increases proportionate to length of service. All officers of the navy are retired at sixty-two years, or after forty-five years of service, receiving for life three fourths of the pay of their rank at retirement.

514. **Education of Officers.** The naval school corresponding to West Point is the United States Naval Academy at United States Naval Academy Annapolis, established in 1845. At present two midshipmen are allowed for each Senator, Representative, and delegate in Congress, two for the District of Columbia, and fifteen each year from the enlisted personnel of the navy. These are appointed by the Secretary of the Navy upon the nomination of the individual Senators, Representatives, or delegates. In addition, the President appoints one midshipman from Porto Rico, and ten at large from the United States. Candidates for appointment must be between sixteen and twenty years of age, and must pass entrance examinations similar to those required at West Point.

The six-year course of instruction corresponds in many respects to that given in advanced technical schools. The last two years of the course are spent at sea, after which come the final examinations. There are annual practice

cruises from June 1 to September 1. Midshipmen are paid \$600 annually from the date of admission, and upon graduation receive commissions as lieutenants of junior grade.

Advanced naval instruction is given in the Naval War College at Newport, Rhode Island, where officers are instructed in special branches, and plans prepared ~~other naval schools~~ for naval operations. Other schools are the Naval ~~schools~~ Torpedo School at Goat Island, the several apprentice training schools for enlisted men, and the gunnery training schools for both officers and men.

515. Rules for the Government of Land and Naval Forces. The power "to make rules for the government and regulation of the land and naval forces" is necessarily included in the power to declare war, and to raise ~~military~~ and maintain armies and navies. At an early ~~law~~ date, Congress adopted rules and articles for the government of the army and navy, thus establishing a code of military law for the government of land and naval forces. Petty offenses in both army and navy may be punished by the commanding officer; while more serious offenses are tried by court-martial.

516. Military Pensions. The pension system of the United States dates from the Revolutionary War, at which time the Continental Congress promised pensions ~~for soldiers who should be disabled, and for the families of those who perished in the struggle.~~ This promise was carried out in 1792 by the enactment of a general pension law; and since that time the United States has provided more generously for those who have fought for its flag than any other nation in the world. In addition to a disability pension, the soldiers of the Revolutionary War, of the War of 1812, and of the Mexican and Indian wars, were given grants of public lands amounting in effect to a service pension.

Down to the Civil War, expenditures for pensions did not exceed \$3,000,000 per year, and at the beginning of that

struggle there were only 8636 pensioners on the rolls. Early in the Civil War, Congress pledged the public faith that those who were disabled in that terrible conflict, and also the families of those who were killed, should be provided for by the government. Accordingly, by the act of 1862, pensions were granted to disabled soldiers, and also to the widows of those who had fallen. Under this law, expenditures for pensions increased rapidly, but in no year before 1890 did the amount reach \$100,000,000. In that year an act was passed which greatly broadened the scope of the system by granting pensions to all persons who, having served in the Civil War, had become for any reason unable to earn a livelihood.

The last act for the benefit of Civil War veterans (passed in 1907) provides a service pension for all who served in the war, regardless of disability. At the present time there are about 900,000 pensioners on the rolls.¹ Since the establishment of the national government in 1789, the total cost to the United States for pensions is estimated by the Commissioner of Pensions at four billion dollars. Over 90 per cent of this enormous sum resulted from the Civil War, the total expenditure for Civil War pensions having now exceeded the original cost to the federal government of the war itself.

A better plan was worked out when the United States entered the great World War, by which the government provided insurance for men in the army and navy. Insurance for soldiers and sailors A Bureau of War Risk Insurance in the Treasury Department insured the men at rates about equal to what they would pay in time of peace. The government also made a family allowance for each man who had a wife or children dependent upon him, and provided a fixed compensation in case of his death or disability resulting from service.

¹ In addition to the pensions granted under general laws, many claims rejected by the Pension Bureau have been allowed by Congress in special acts. In all about 10,000 such acts have been passed since 1861, granting pensions to persons who could not bring the necessary proof before the Pension Bureau.



Courtesy, Navy Department

U. S. BATTLESHIP NORTH CAROLINA



THE UNITED STATES AND ITS POSSESSIONS

Shown by shading, and by names in heavy type.

TERRITORIAL GROWTH OF THE UNITED STATES

Area of the Original Thirteen States 1789	892,135	Alaska 1867	590,884
Louisiana Purchase 1803	827,987	Hawaiian Islands 1898	6,449
Oregon 1805-1846	286,541	Porto Rico 1898	3,435
Florida Purchase 1819	72,101	Guam, Wake and Tutuila Islands 1899 (1890)	287
Texas Annexation 1845	389,166	Philippines Islands 1898	115,026
Mexican Cessions 1848-1853	578,560	Panama Canal Zone 1904	436
Virgin Islands, 1917	150		
Total Area of United States and its Possessions			3,743,456
Total Area of Europe			3,754,282



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QUESTIONS AND EXERCISES

1. Name the causes, principal battles, and results of each of the great wars which the United States has waged.
2. Name several restrictions imposed by international law upon methods of warfare.
3. What are the rights and duties of neutrals with regard to belligerent powers?
4. Prepare a report upon the President's military powers in time of war.
5. What is martial law? May a civilian be court-martialed?
6. May the property of individuals be confiscated as a war measure?
7. Have our recent territorial acquisitions involved any change in our historic military policy?
8. What is the present strength of our standing army? Into what departments is it organized? Who is the commanding general?
9. What was the amount of last year's appropriation for the army? For the navy? For coast defense? For pensions? Do you consider the total appropriation for military purposes excessive?
10. Assuming that preparation for war is a necessity, which should receive most attention, the army, navy, or coast defense?
11. Describe the principal defenses of the Pacific coast; of the Atlantic coast.
12. Give an account of the United States Military Academy; of the United States Naval Academy.
13. Give an account of the achievements of our navy in the Spanish-American War; in the World War.
14. Compare our navy with that of Great Britain, Germany, France, and Japan.
15. Give an account of recent pension legislation.
16. Suggested readings upon the army and navy: Reinach, P. S., *Readings*, pp. 610-660.

CHAPTER XXXV

MISCELLANEOUS POWERS

517. Control of Naturalization. Under the constitution, Congress has exclusive power to establish a uniform rule on ~~Aliens and~~ the subject of naturalization; or in other words, to ~~citizens~~ determine the conditions upon which aliens may become citizens. An alien is a person who by reason of his foreign birth is not entitled to the privileges of American citizenship. Citizens are of two classes — native-born and naturalized. In general, all persons born within the United States, as well as the children born abroad of American parents, are native-born citizens. Naturalized citizens are aliens who have attained citizenship through the process of naturalization.

518. Process of Naturalization. The method of naturalization prescribed by Congress requires a minimum residence ~~Declaration~~ in this country of five years.¹ At least two years ~~of intention~~ before his final admission, the alien must declare on oath that it is his intention to become a citizen of the United States, and to renounce forever his allegiance to the foreign country of which he is a subject or citizen. This declaration is made before a circuit or district court of the United States, or before a court of record of the State in which the applicant resides.² The declaration of intention sets forth the applicant's name, age, occupation, personal description, place of birth, last foreign residence and allegiance, date of arrival in the United States, and present residence. The declaration is recorded and a certified copy furnished the applicant, who is then said

¹ This has been the required term since 1795 except during the years 1798-1802, when it was fourteen years.

² The State court must be one of common law jurisdiction, having a seal and a clerk.

to have taken out his first papers or to have made his declaration.

Not less than two nor later than seven years from the declaration of intention, the applicant may present to the court a petition signed in his own writing and ~~final~~ duly verified, requesting admission to full citizen-~~admission~~ ship. This sets forth the fact that the petitioner has been a resident of the United States at least five years continuously, and of the State or district where the court is held at least one year; that he is not opposed to organized government, and is not a believer in polygamy; and that he absolutely and forever renounces all allegiance to the foreign country of which he has been a citizen. Finally, the applicant must declare on oath in open court that he will support the constitution of the United States. Two witnesses must testify to his term of residence; and if it appears to the satisfaction of the court that during that time he has conducted himself properly, he may be admitted to citizenship. The privilege of naturalization is not accorded to aliens of all races, but is limited to "aliens being free white persons, and to aliens of African nativity and persons of African descent."¹ A record of the naturalization of aliens is kept by the Bureau of Naturalization, one of the divisions of the Department of Labor. The naturalization of an alien includes his wife and minor children residing in this country.

519. Naturalization of Communities. When foreign territory is annexed to the United States, Congress may pass a general act conferring citizenship upon the inhabitants of such territory. This was done upon the annexation of Texas, New Mexico, and California, and shortly after the annexation of Hawaii. The inhabitants of Porto Rico were made citizens of the United States in 1917; the Filipinos are entitled to the protection of this country, but are not citizens.

¹ The naturalization of Chinese is expressly prohibited by act of Congress; nor may citizenship be conferred upon aliens who cannot speak English.

520. Effects of Naturalization. The result of naturalization is to confer practically all the privileges of native-born citizens, except that of eligibility to the Presidency or Vice-Presidency.¹ Naturalized citizens become citizens of the State or territory in which they reside, as well as of the United States. Naturalization does not of itself confer the right of suffrage, since the right to vote comes from the State, and the qualifications for suffrage are determined by State laws. But most States confer the right to vote upon all citizens of the United States who have resided within the commonwealth for one year; and eleven States even permit aliens to vote, provided they have declared their intention of becoming citizens.

521. Power over Bankruptcy. A bankruptcy law is one which provides for the equitable division among his creditors of the property of an insolvent debtor, whereupon the latter is discharged from legal liability for the remainder of his debts. The object of a bankruptcy law is to afford relief to the debtor who is hopelessly insolvent, while also securing to each creditor payment of a proportionate share of his claim.

The constitution vests in Congress power to establish uniform laws on the subject of bankruptcy throughout the United States. If Congress does not exercise this power, the States may pass laws dealing with the subject; but when Congress passes a national bankruptcy act, State bankruptcy laws are thereby suspended, the federal law operating throughout the entire Union.

On four occasions in our history, Congress has exercised this power, but most of the federal bankruptcy laws have been of brief duration. Thus the bankruptcy act of 1800 was repealed in 1803; that of 1841 in 1843; that of 1867 in 1878; while the law passed in 1898 remains in force.

¹ At least seven years of citizenship is required in order to be eligible to the House of Representatives, and nine years for the Senate.

522. Power over Copyrights. In order to promote the progress of science and the useful arts, the constitution vests in Congress the power to enact copyright laws, ^{copyright} laws whereby the works of authors may be protected.

A copyright law is one which secures to an author the exclusive right to print, publish, and sell his writings, and generally the exclusive right to dramatize them. The present law grants a copyright for a term of twenty-eight years, and provides for a renewal by the author (or the widow, widower, or children of the author, or next of kin) for the further term of twenty-eight years.¹

In order to secure copyright on a book or other work reproduced in copies for sale, the work must be published with the copyright notice; and promptly after ^{Securing a} publication, two copies of the best edition must ^{copyright} be sent to the copyright office at Washington, together with an application for registration, accompanied by the fee of one dollar. In the case of books by American authors, an affidavit is required stating that typesetting, printing, and binding of the book have been performed within the United States.

Repeated attempts have been made to secure the enactment of an international copyright law, but as yet such efforts have proven unavailing. Many nations, including the United States, grant copyrights ^{International} ^{copyright} to citizens of foreign countries provided the foreign country grants reciprocal rights. The benefit of our copyright law to foreign authors is greatly restricted by the requirement that in order to secure protection, the book (if in the English language) must be printed in the United States.²

523. Patents. Congress has authorized the granting of patents securing to inventors for a limited period the ex-

¹ Copyright protection is granted to books and periodicals, maps, dramatic or musical compositions, photographs, works of art, or designs for works of art, sermons, and lectures.

² Books of foreign origin in a language other than English need not be manufactured in the United States in order to secure the copyright.

clusive right to make, manufacture, and sell their inventions.

What may be patented Patents may be granted to any person who has invented or discovered any new or useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof; or any new or original design for an article or manufacture.¹ Patents are valid for a period of seventeen years.

Patents are issued through the Patent Office, a bureau of the Department of the Interior since 1849. Applications must be made in writing to the commissioner of patents, the applicant being required to state under oath that he believes himself to be the original inventor of the article upon which he seeks a patent. The application must be accompanied by a written description of the invention, giving all the specifications in a full, clear, and concise manner. The description is generally accompanied by drawings, and if necessary the inventor may be required to furnish a model.²

Upon receipt at the Patent Office, the application is referred to the proper examiner to decide whether the article is an invention, and whether it possesses novelty and utility.³ If the examiner reports favorably,

the patent is issued; if his decision is adverse, the applicant may appeal to the board of examiners, and from their decision to the commissioner of patents, and finally to the court of appeals of the District of Columbia.

An infringement of a patent consists in wrongfully making, using, selling, or otherwise dealing with a patented invention. Infringements of patents give rise to much litigation, and in such cases the patentee has two remedies: he may sue at law for damages; or he may

¹ The article must be one not patented or described in any printed publication in this or any foreign country prior to the invention, and not in public use or on sale in the United States for more than two years prior to the application.

² The fee on filing an application for a patent is fifteen dollars; on issuing the patent, twenty dollars. All patented articles must be marked with the word "patented," together with the exact date on which the patent was granted.

³ The requirement as to utility is very liberally interpreted.

apply to a court of equity for an injunction restraining the infringer from continuing his acts, praying also for damages for the injuries sustained.

The Patent Office with its collection of valuable models is one of the most interesting of the government bureaus. The office performs an economic service of the highest importance in encouraging invention; and it is estimated that one third of the world's important inventions originate in the United States. Since 1837 nearly one million patents have been issued.

524. Trade-Marks. By acts passed in 1870 and 1876, Congress attempted to establish a universal system of trade-mark registration in order to secure to owners of trade-marks the exclusive right to their use. These acts were held unconstitutional by the Supreme Court, since a trade-mark is not an invention, discovery, or writing within the meaning of the clause of the constitution relating to patents and copyrights. Further, the acts could not be sustained under the commercial power, because they were not limited to trade-marks used in foreign and interstate commerce. In 1881, Congress passed a statute dealing with the same subject, but limited in its scope to trademarks used in foreign and interstate commerce.

525. Weights and Measures. Although expressly authorized by the constitution to fix the standard of weights and measures, Congress has done little in the exercise of this power. Legislation has been enacted providing a standard troy pound for the regulation of the coinage (1828), establishing uniform standards for use in the customs and internal revenue service, and making permissive but not obligatory the use of the metric system.

In the absence of exclusive congressional legislation, each State has the right to adopt its own standard of weights and measures. The States have retained the old English standards, instead of adopting the metric

system used throughout the greater part of the civilized world. Whenever Congress sees fit to establish a national standard, these State laws will be superseded, just as in the case of a national bankruptcy law.

526. Federal Power over Crimes. The power of Congress to define and punish crimes is either expressly granted ~~Express~~ by the constitution, or necessarily implied in the ~~powers~~ grant of other powers. Authority is expressly conferred to deal with the following crimes: (1) counterfeiting; (2) piracies and felonies committed on the high seas; (3) offenses against international law; and (4) treason.

Congress has implied power over a large number of crimes, this authority being indispensable to the effective ~~Implied~~ exercise of the law-making function. Thus the ~~powers~~ power to establish post offices and post roads necessarily implies power to punish the crime of robbing or obstructing the mails; the power to levy customs duties and excises requires provision for penalties at every step; while the right to control foreign affairs and to regulate foreign commerce authorizes such a measure as the Espionage Act of 1917. This law forbids the disturbance of foreign relations by false statements and conspiracies, provides penalties for attempts to endanger the safety of a vessel or its cargo, and authorizes the Postmaster-General to exclude from the mails all matter deemed seditious, anarchistic, or treasonable.

527. Counterfeiting. Congress is expressly empowered to "provide for the punishment of counterfeiting the securities and current coin of the United States." Counterfeiting includes not only the manufacture of forged coins and securities, but also passing them when made, or having them in possession with intent to pass them. The term also includes the counterfeiting or passing counterfeits of excise and postage stamps, stamped envelopes, postal cards, letters patent, postal money orders, custom-house certificates,

land-warrants; and also the coins, notes, and bonds of foreign governments.

528. **Piracy.** Congress is empowered to define and punish piracies and felonies on the high seas, and offenses against the law of nations. Piracy as the word is used in international law denotes robbery or forcible depredations committed on the high seas. The jurisdiction of a country over the adjacent sea ordinarily extends to a line three miles beyond low-water mark; but the high seas or ocean lying outside this line form the highway of nations, subject to their common jurisdiction. Pirates may be lawfully captured on the ocean by the ships of any nation, and every country has jurisdiction to punish them, since they are regarded as the common enemies of mankind. The universal penalty for piracy is death.

Since Congress has power to define piracy, it may enlarge the definition so as to include other crimes than piracy as known to the law of nations. Accordingly, Congress has provided that certain other offenses shall be deemed piracy, such as the slave-trade, murder on the high seas, and acts of hostility against the United States or its citizens under color of a commission from a foreign state.

529. **Offenses against the Law of Nations.** Congress also has power to punish offenses against the law of nations. Instances of the exercise of this power are to be found in the neutrality laws which forbid the fitting-out of armed vessels or the enlisting of troops within the United States for the use of a belligerent power. Another example is the law which prohibits the organization within the boundaries of the United States of armed expeditions against friendly nations.

530. **Treason.** Since treason aims at the very life of government, it has always been considered the most serious of crimes, and punished with the severest penalties. At the ancient common law the defini-

tion of treason was left largely to judicial discretion; and as a result many offenses were included in the class of constructive treason, subjecting those who committed them to the most barbarous punishment. Finally in the reign of Edward III, Parliament swept away the doctrine of constructive treason by a statute declaring and defining all the different branches of treason.

Similarly the framers of the constitution, in order to prevent legislative or judicial extension of the term, inserted

Treason under the constitution in that instrument the definition of treason as consisting only in levying war against the United States, or adhering to its enemies, giving them aid and comfort. To constitute this crime, war must be actually levied against the United States; a conspiracy to subvert the government by force, although criminal, is not treason.¹ As an additional safeguard to a person accused of treason, the constitution declares that there shall be no conviction except on the testimony of two witnesses to the same overt act, or on confession in open court.

Death in the most terrible form was the common-law punishment for treason, besides corruption of blood and

Penalties forfeiture of the estate of the offender. Corruption of blood meant the destruction of all inheritable qualities in the person, so that he could not succeed as heir to any lands, nor could others inherit property from or through him. His estate was permanently forfeited to the crown. These severe punishments were prohibited by the constitution, which provides that no attainer (conviction) of treason shall work corruption of blood; while forfeiture of estate is permitted only during the lifetime of the person convicted. The penalty for treason

¹ "On the contrary, if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are traitors. And one is adherent to the enemies of the country, and giving them aid and comfort, when he supplies them with intelligence, furnishes them with provisions or arms, treacherously surrenders to them a fortress, and the like." — *Ex parte Bollman*, 4 Cranch, 75.

under existing laws is death; or at the discretion of the court, imprisonment for five years at hard labor, with a fine of not less than \$10,000, and perpetual disqualification for office under the United States.

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QUESTIONS AND EXERCISES

1. Describe fully the Alien and Sedition laws. What were the political results of these measures?
2. Should our present requirements for naturalization be increased? Give reasons.
3. Can persons of all races become naturalized?
4. How may an American citizen lose his citizenship?
5. When the father of a family becomes naturalized, what is the status of his children of foreign birth? Of those born in the United States?
6. Give arguments for and against a federal bankruptcy law.
7. What recent change has been made in the term for which copyrights are granted? Why do foreign authors complain of our copyright law?
8. Name five of the greatest inventions patented by Americans.
9. What arguments can you give for and against the establishment by federal law of the metric system of weights and measures?
10. How may a trade-mark be protected?
11. Give historical examples of treason against the United States. What punishment was imposed?
12. Name several crimes against federal law. What court has jurisdiction over these offenses? (See Sec. 407.)

CHAPTER XXXVI

HISTORY AND ORGANIZATION OF POLITICAL PARTIES

531. Importance of Political Parties. In the United States political parties are the great motive force by which ^{Motive power of government} the machinery of government is moved. Federal and State constitutions and statutes form the legal foundation of government; but even the provisions of the written constitution have been profoundly modified through the action of party organizations. In both legislation and administration, the will of the people is generally expressed, however crudely, through the agency of political parties. Hence some knowledge of party history and organization is essential to a clear understanding of our institutions and government; for broadly speaking, it is by the parties that the business of government is conducted, and it is largely owing to their influence that our political institutions have assumed their present form.

532. Functions of Parties. Four principal functions are performed by parties in carrying on the work of government. (1) Parties afford a means of crystallizing and unifying public sentiment upon the questions of the day.¹ The citizens united in a party are usually in substantial agreement upon certain policies, and by the adoption of a party platform these principles are placed before the voters for approval or rejection. (2) Parties supply the machinery by which the great majority of elective officers are nominated, thereby enabling the party voter to cast his ballot for candidates of his own political faith. (3) They are the agencies by which political campaigns are conducted, the manage-

¹ "The true office of the elaborate apparatus used to work up popular excitement over party issues is to energize the mass of citizenship into political activity." — Ford, H. J. *The Rise and Growth of American Politics*, p. 806.

ment of which is entrusted to various party committees. (4) Parties provide an agency for the control of executive and legislative policies and agents.¹ Under our system of distributing powers among the several departments of government, parties afford a valuable means of unifying and harmonizing the legislative and executive branches. If a party secures control of both these departments, it thereby becomes morally responsible for carrying out the policies outlined in its platform. Hence, although executive and legislative officers possess independent powers under the constitution, they must work in harmony to carry out the policies of the political party to which they owe a common allegiance.

533. Origin of Parties. The history of our political parties commences with the Constitutional Convention of 1787. The first issue which led to the rise of ^{The Constitu-} ^{tional} ^{Convention} parties was the question of the formation and adoption of the federal constitution. One party, the Nationalists, later called the Federalists, favored a strong authority to which the States should be distinctly subordinated. Another group, composed chiefly of delegates from the small States, maintained that the several commonwealths ought to retain all the important powers of government, the national government controlling only such matters as foreign relations and national defense.

534. The Federalists (1788-1816). The Federalists came into power upon the ratification of the constitution, and remained in control of the government until ^{Principles} 1801.² Their chief support came from the commercial classes of New England and the small Middle States, and from the wealthy and conservative class in general. In foreign affairs the Federalists favored Great Britain,

¹ "The occasion for it (party organization) was the need of means of concentration so as to establish a control over the divided powers of government. Party machinery was devised under the stimulus of necessity and has been submitted to because there was no help for it." — Ford, H. J., *The Rise and Growth of American Politics*, p. 297.

² Although Washington was not a member of either party, he was by force of circumstances as well as by natural inclinations practically in accord with the Federalists.

viewing French republicanism with alarm and dread. Their party stood especially for three principles: first, a strong central government; second, a liberal construction of the constitution so as to extend as widely as possible the powers of the federal government;¹ and third, rule by the leaders.

The aristocratic tendencies of the Federalist party foredoomed it to failure with the growth of the spirit of democracy. The enactment of the Alien and Sedition

Downfall laws was a serious political blunder, and the party never regained control of the government after its defeat in 1800. With the close of the War of 1812 (to which the Federalists had been bitterly opposed), that party disappears from our political history.

535. The Democratic-Republican Party (1788-1820). After unsuccessfully opposing the ratification of the con-

origin stitution, the anti-federalists accepted the situation, but insisted that the terms of that instrument should be so construed as to forbid an extension of the powers of the federal government beyond those expressly granted. Soon this party became known as the "Republican" or "Democratic-Republican," because of its sympathy with the Republican party in France. In earlier years it derived its main support from the South and the agricultural classes, as well as from the poorer class generally.

Its main principles were first, a strict construction of the federal constitution, so as to restrict to a narrow

Principles field the powers of the national government; and second, rule by the common people, with especial care for the rights of individuals.² The Democratic-Republican party had continuous control of the government from 1801 until 1825; but the force of circumstances during these years compelled a considerable modification of its principle of opposition to the extension of federal power. When the Federalists were in power, such policies

¹ Hence the party is sometimes called a liberal or loose construction party.

² As pointed out by Bryce, the Republicans claimed to be the apostles of Liberty, while the Federalists represented the principle of Order.

as the assumption of State debts, the establishment of a United States Bank, and the adoption of a system of indirect taxation were denounced by the Republicans as unwarrantable usurpations of power. But on gaining control of the national government, Jefferson and his followers did not hesitate to extend the domain of federal power. The Embargo Act and the annexation of Louisiana proved that whatever their theoretical principles as a party of opposition, the Republicans would not hesitate to adopt a strong national policy when in power.

536. Reorganization of Parties (1820-1830). The reelection of Monroe in 1820 by every electoral vote save one marked the obliteration of old party lines; and the following decade was a period of transition ^{Period of transition} during which factions were opposed on personal and sectional grounds, rather than on account of party principles. Gradually about 1830 two great parties were again formed, one of which took the name of the Democratic party, the other being known first as the National-Republican, and later as the Whig party.

537. The Democratic Party (1830-1856). The new Democratic party, organized under the leadership of Andrew Jackson, adopted the principles and traditions ^{Principles} of the Jeffersonian Republicans. It was the champion of States' rights and of a strict construction of the constitution; and hence it opposed the United States Bank, likewise the protective tariff, and the policy of internal improvements carried on by the federal government.

538. The National Republican or Whig Party (1830-1856). Under the leadership of Clay and Webster, the Whigs adopted many of the views formerly held ^{History and policies} by the Federalists, such as the encouragement of manufactures by a protective tariff, and the expenditure of public money for internal improvements.¹ Throughout

¹ The Whigs, like the Federalist party, derived their chief support from New England and the small Middle States.

most of its history the Whig party was one of opposition. Although it succeeded in electing two Presidents, only once did it have both the Presidency and Congress within its control; and on that occasion the death of Harrison and the succession of Tyler (who was in fact a Democrat) prevented the adoption of Whig policies. The party was discredited by the Compromise of 1850, and became hopelessly divided upon the slavery issue. It received a crushing defeat at the presidential election of 1852, and in the same year the death of its great leaders, Clay and Webster, marked its final overthrow.

539. Second Reorganization of Parties (1852-1860). By 1850 slavery had become the one great political issue in ^{Disruption of Democratic party} spite of the efforts of the parties to evade the question. During the next few years parties were reconstituted on the question of the extension of slavery. By this time the Democratic party had passed under the control of the pro-slavery element. The presidential elections of 1852 and 1856 resulted in the choice of Democratic candidates; but in the election of 1860 the party was divided upon the slavery issue, the Northern wing of the party nominating one candidate, and the Southern wing another.

Meantime a new party organization had come into existence, formed out of various elements opposed to slavery ^{Republican party} — the abolition Whigs, the anti-slavery Democrats, the Liberty party, and the Free Soilers. This was the Republican party, which, although unsuccessful in the election of 1856, succeeded in electing Abraham Lincoln in 1860. The Republicans proclaimed as a fundamental principle the right and the duty of Congress to prohibit slavery in the territories, and the success of their party at the election of 1860 was soon followed by the secession of eleven slave States.

540. Parties since 1860. Although the great body of Northern Democrats were stanchly loyal to the Union,

their party was disrupted by the Civil War, the Republicans remaining in uninterrupted control of the ^{Political} government from 1860 to 1884. Until 1880 the ^{issues} parties were divided principally over issues arising from the Civil War, especially the question of reconstruction. From 1880 to 1892, the tariff question was the prominent issue, the Republicans favoring a protective tariff, and the Democrats a tariff for revenue only. From 1892 to 1900, the silver question was the all-absorbing issue, the Republicans favoring gold monometallism, the Democrats bimetallism at the ratio of 16 to 1. Since 1898, the so-called policy of imperialism, as well as such subjects as the control of corporations, the establishment of postal savings-banks, the taxation of incomes, the conservation of natural resources, and the revision of tariff rates, have received considerable attention in party platforms.

541. Minor Political Parties. Many minor or "third" parties have been formed from time to time in our history, and some of these have had a considerable influence upon political affairs. But as a rule voters ^{historic} ^{"third"} ^{parties} have accepted the two-party system, and it has been difficult to induce them to vote with a third party. Among the more important minor parties, all of which have long since ceased to exist, are the Anti-Masonic party of 1828-32, the Liberty party of 1840, the Free Soil party of 1848, the Know-Nothing or American party of 1854, the Liberal Republicans of 1872, and the Greenback party of 1876.

Of the existing minor parties the oldest is the Prohibition party (founded in 1872), which aims to secure the suppression of the liquor traffic throughout the United States. Other important minor organizations are the Socialist-Labor party, which has held national conventions since 1892, and advocates the adoption of a complete socialistic programme; the Socialist party, which was formed from a faction of the Socialist-
^{existing}
^{minor}
^{parties}

Labor party, and advocates similar policies; and the People's or Populist party, which was formed about 1892, advocating as its chief principle the free coinage of silver. Of the minor parties in existence since the Civil War, the People's party alone has been successful in carrying the electoral vote of any State.

542. Organization of Parties. The two chief instruments in the management of parties are the party convention and ~~conventions and party committees~~ the standing committee. Although it represents the supreme authority of the party, the convention is only a temporary body, and hence a more permanent agency is needed to carry on the everyday business of party management. Accordingly the convention elects standing committees — national, State, and local — which manage party affairs until the assembling of the succeeding convention. Such matters as the nomination of candidates and the formulation of party platforms are reserved for the convention itself; while to the several party committees are entrusted the calling of conventions, the management of campaigns, the organization of political clubs, and the general control of the party's interests.

At the head of the permanent party organization is the national committee, consisting of one member from each ~~The national committee~~ State and territory. This committee is chosen every four years at the national convention, each State and territorial delegation being entitled to one representative. The national committee may appoint a smaller executive committee, which carries on the presidential campaign under the direction of the national chairman. Other important functions of the national committee are the choice of a place of meeting for the ensuing national convention, and the selection of its temporary chairman.¹

¹ Another party committee national in character is the congressional committee, appointed at a joint or separate caucus of the members of each party in the Senate and House. This committee includes members from each State and territory which has representatives in either house. Its special function is to cooperate with the local committees during congressional campaigns, its efforts being directed especially toward carrying doubtful districts.

Independent of the national committee, but acting in harmony with that body, is the State central or State executive committee. This is composed of representatives from each congressional or State senatorial district, or of members chosen by the State convention, or elected by the several county conventions. The chief functions of the State committee are to fix the time and place for the meeting of the State convention, to arrange the preliminary work of that body, to wage the party's campaign in the State, and in general to advance the party's interests.

The local party committees include county, township, city, and sometimes even ward and precinct committees; and there is also a committee for each congressional district. Members of local committees are generally chosen either by the voters at a party primary, or by county or city conventions. The local committees issue the call for the party primary, and often determine the rules under which it is held. Hence they exercise important powers, since the local primaries form the basis of the entire nominating machinery.

543. The Party Machine. This hierarchy of committees is usually spoken of as the "machine" or "organization." Much criticism is directed against the machine because too frequently it goes beyond its legitimate functions of serving the party, and seeks to perpetuate its own power by dictating nominations, thus indirectly controlling a large number of elective and appointive officers. In order to accomplish this result, the machine must control the primaries, since only in this way can delegates be elected who are favorable to the wishes of the organization. Hence local committees often make up a ticket or slate previous to the primary, and endeavor to secure the election of certain individuals as convention delegates. This usurpation of power is frequently successful, owing to the lack of interest taken by the ordinary voter in party management; and hence control of nominations and party poli-

cies is largely in the hands of committees which in theory are only the agencies for carrying out the will of the voters.

Within recent years there has been a marked tendency for political organizations to pass under the control of a **The "Boss"** single person. Owing to his superior political skill and sagacity, some leader often wins the title of "Boss" by establishing himself as the chief controlling factor in local or even State party affairs. Large cities have commonly been the most favorable fields for the Boss and for machine control generally, because of the numerous offices and the frequent opportunities to secure illicit gain.¹ Sometimes the sphere of the Boss is larger than the city, including the entire State.

544. Party Responsibility. The great problem in American politics is to make the political party virtually as well **Unrepresentative nominations** as nominally responsible to its members. Too often the political prerogatives of the ordinary citizen are confined to choosing between candidates for office who have been nominated by the small group of politicians in control of each party. The right to choose between two candidates in whose nomination the voter has had nothing to say may be democratic government in form, but it is not in substance. Since the parties control the government, it is essential to representative rule that the parties themselves be effectually controlled by their members.

Serious abuses on the part of the machine generally end in a revolt within the ranks of the party, many of whose **Opposition to machine control** members finally support opposing candidates as a rebuke to machine methods, or else form an organization within their own party with which to oppose the machine. Direct nominations constitute the most promising means of checking excessive control by the party

¹ Bryce enumerates the following conditions as tending to give rise to rings and bosses: (1) the existence of a spoils system. (2) Opportunities for illicit gains arising out of the possession of office. (3) The presence of a mass of ignorant and pliable voters. (4) The insufficient participation in politics of the good citizens. — Bryce, *James, The American Commonwealth*, II, p. 120.

organization; but up to the present time no remedy has been devised which will entirely prevent the evils resulting from the tendency of party organizations to dominate rather than to serve their party.¹

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QUESTIONS AND EXERCISES

1. Define a political party, and describe the functions which it performs.
2. Prepare a report upon the principles and leaders of the Federalist party.
3. Describe the principles of Jefferson and the Democratic-Republican party.
4. What were the political principles of the Whig party?
5. Give an account of the rise of the present Republican party.
6. Describe the political parties and issues in the campaign of 1860.
7. State which political party has generally favored and which one has opposed the following policies: (a) liberal construction of the federal constitution; (b) a protective tariff; (c) a national banking system; (d) internal improvements by the federal government, (e) restriction or abolition of slavery; (f) severe measures in "reconstructing" the seceding States; (g) resumption of specie payments; (h) gold monometallism; (i) colonial expansion.

¹ "The great need in American politics to-day is that young men of high ideals and resolute purposes for good government should devote themselves to political activity, standing up stoutly and constantly for honest government, high ideals in politics, and that active participation in political life by which better government is brought to pass." — Woodburn, J. A., *Political Parties and Party Problems in the United States*, p. 303.

8. Who represents your State upon the national and congressional committees of each party?
9. How many members compose the Democratic State committee in your commonwealth? The State committee of the Republican party? How are the members of each committee chosen?
10. Who are the members of your local party committees in your county, city, ward, and precinct? How are these chosen?
11. Describe the work and powers of each of these committees with reference to : (a) calls for party primaries and conventions; (b) filling vacancies on the party ticket, (c) raising and expending campaign funds; (d) arranging political meetings; (e) canvassing voters, and "getting out the vote" on election day.
12. What do you understand by the party machine? The party boss? Name the chief party leaders in your community.
13. Describe the work performed by the party machine. (Bryce, James, *The American Commonwealth*, II, pp. 90-96.)
14. Describe some of the abuses of party organization and methods.
15. What were the principal issues between the two parties at your last State election? Who were the leading candidates of each party? Results of the election?
16. Give the same facts with regard to your last municipal election.
17. In the choice of local officers, which is of greater importance to the voter — that a candidate belongs to a particular party, or that he possess a high degree of honesty and ability? Should party politics have any part in local elections?
18. Are members of your board of education chosen on a party ticket, or nominated by petition and chosen by ballots which contain no party emblems or names? Give arguments in favor of the latter method.
19. Answer the same question with regard to candidates for the judiciary in your State.
20. What are the arguments in favor of fewer elective offices and short ballots? (Kaye, P. L., *Readings*, pp. 384-391.)
21. In your State are candidates for office required to file a statement of their election expenses? What is the object of such a provision?
22. Report upon the methods of suppressing political corruption. (Kaye, P. L., *Readings*, pp. 513-525.)
23. Is there a corrupt practices act in your State? If so, give its chief provisions.



(By courtesy of *Collier's Weekly*)

THE COLISEUM, CHICAGO

The meeting-place of the Republican National
Convention, 1908.



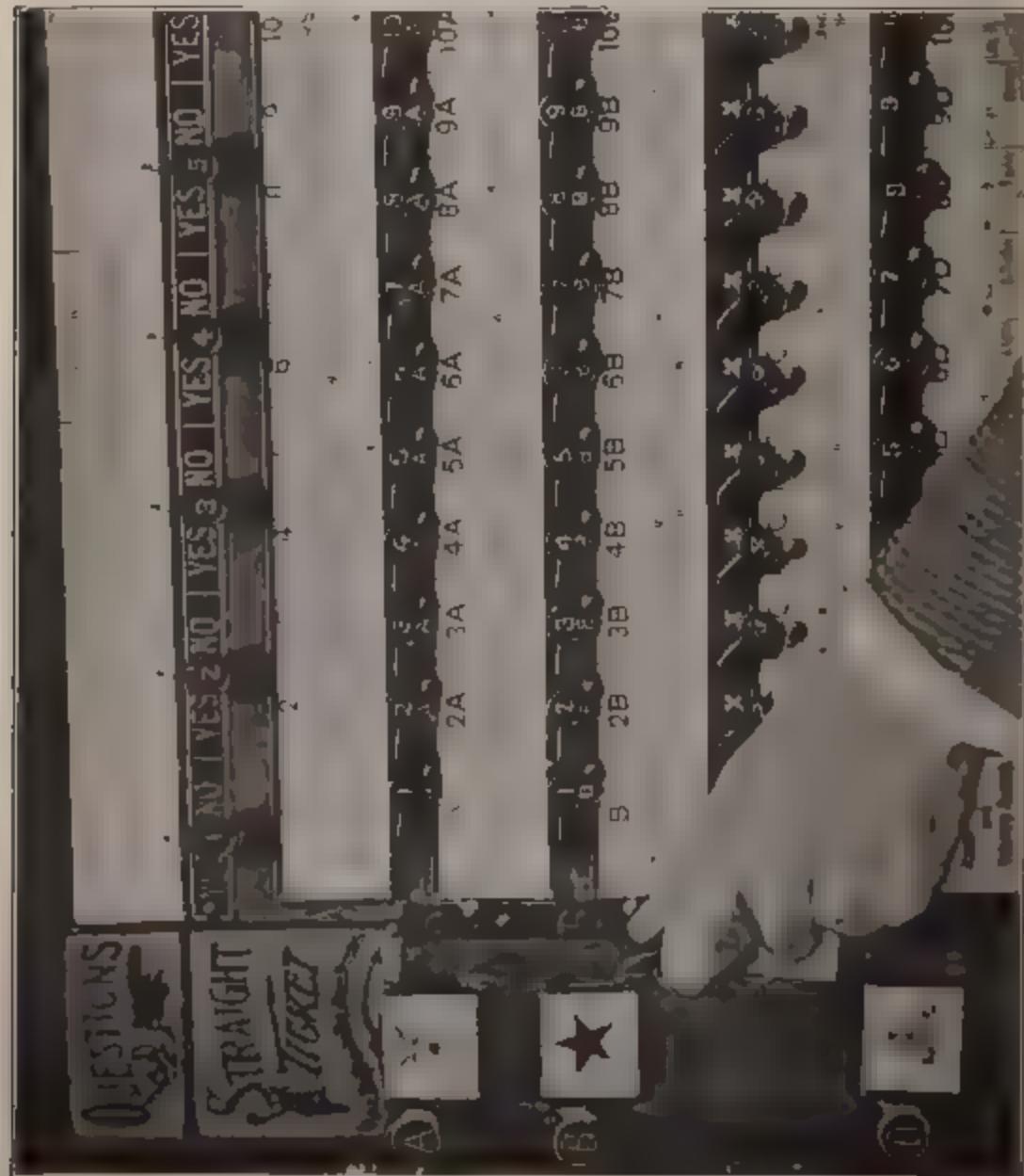
A POLITICAL PARADE

An effective campaign method.

(By courtesy of the Empire Voting Machine Company)

THE DIAL OF A VOTING MACHINE

A straight party ticket is here being voted. The voter has pulled the lever at the end of his party row, so that all the pointers in that row are turned down toward the names of the candidates. A bell rings when the lever has been pulled far enough to operate the registering machinery. Each voting machine is entirely locked when the voter closes it after entering, and which cannot be opened until a vote of some sort has been cast. When the voter opens the curtain, after voting, to leave the machine, the pointers are automatically returned to their original positions. A ticket may be split by turning back (up) the pointer over the name of the candidate whom he wishes to scratch and then turning down the pointer over the name of the other candidate for whom he wishes to vote. To vote on Questions, the pointer is turned toward "Yes" or "No." A single operation of the party lever records a vote of any sort — straight, split, or on the Questions.



CHAPTER XXXVII

NOMINATIONS AND ELECTIONS

545. Methods of Nomination. Throughout the United States, candidates for office are commonly nominated either by the party primary or by a nominating convention. While other methods of nomination are sometimes employed (such as nomination by petition), the primary and the convention are the two great agencies by which party nominations are made.

546. The Party Primary. The primary, or primary election, is either a deliberative meeting or a virtual election held by the political partisans of a small area, such as a rural township, or a city ward or precinct. Generally the primary performs a twofold function: (1) that of nominating candidates for local offices within its boundaries; and (2) of electing delegates to conventions which nominate candidates from larger areas, such as the city, or county, or congressional district.

Thus the primary is the foundation of the entire system of nominating machinery, since it directly nominates certain local officers, and indirectly — through delegate conventions — nominates all others. Even the great national conventions proceed from the local primaries; for they are composed of members chosen by State or congressional district conventions, the delegates to which have been elected at local primaries.

Recognizing the importance of party primaries in our system of popular rule, many States have passed laws which in effect make the primary a part of the machinery of government. Such laws commonly prescribe the qualifications of those who may partici-

Primary
and con-
vention

Functions

Importance

Legal regu-
lation of
primaries

pate, the time and place of holding the primary, its organization and general management. The object of such legislation is to secure to each party member his right to participate in the primaries and to have his vote fairly counted. In the absence of legal regulation, the primary is conducted in accordance with party rules and customs.

547. Types of Primaries. In New England and several States elsewhere, the primary (or caucus) is virtually a **Town-meet-** town-meeting of the party voters. The call (**is-ing type**) issued by the local committee requests the party members to assemble at a certain time and place for the purpose of nominating candidates for local offices, electing delegates to conventions, selecting local committees, and transacting other party business. This form of primary is adapted only to comparatively small districts, such as towns, wards, or thinly settled rural counties.

The second type of primary (which prevails generally throughout the United States) is in fact an election, the **Primary election** only important difference between it and the regular election being that the primary is confined to the voters of a single political party. The polls are open as on election day, and the person receiving the highest number of votes for any particular office is thereby nominated.

548. Local Nominating Conventions. A nominating convention is a meeting of delegates who have been chosen **County conventions** for the purpose of nominating candidates for certain offices, and transacting other party business, such as the appointment of committees and the adoption of a platform. Delegates to county conventions are ordinarily chosen at primaries held in the various townships or wards. County conventions nominate the candidates for the various county offices, as the county commissioner, sheriff, treasurer, auditor, register of deeds, district attorney, and (in many commonwealths) the judges of the county courts. Frequently they also elect delegates to the State convention, and choose the members of the county committee.

In municipal elections, party lines are often drawn almost as closely as in State or national elections, notwithstanding the non-political character of most local business. The municipal officers elected by popular vote generally include the mayor, members of the council and school board, treasurer, city solicitor, and street commissioner. These officials are commonly nominated at municipal conventions composed of delegates chosen at party primaries in the various wards or election precincts of the city.¹

549. Judicial and District Conventions. For the election of judges of the county courts, the State is generally divided into districts which include several counties; and candidates for these judgeships are ordinarily nominated in judicial conventions within each district.

For the choice of members of the legislature, many States are divided into senatorial and also into smaller representative or assembly districts; and legislative candidates are nominated by conventions composed of delegates chosen at primaries in the townships or wards within the district. In other commonwealths, the county is taken as the basis of apportionment in one or both houses — each county being entitled to a certain number of senators or representatives; and in these States candidates for the legislature are generally nominated by the county convention.

550. State Nominating Conventions. The State convention ordinarily consists of several hundred delegates chosen by party voters either directly at the primaries, or indirectly through county or district conventions. The State convention nominates the officers elected by the people of the State at large,

¹ But in many cities the candidates for municipal office are chosen directly at the primaries, each party voter casting his ballot for the candidates of his choice, those receiving a plurality becoming the party nominees. Nomination by petition is also permitted in many cities, especially for members of the board of education.

including the governor, lieutenant-governor, secretary of State, treasurer, and in most commonwealths, an auditor, attorney-general, superintendent of public instruction, State engineer, surveyor, and judges of the supreme court.

The call for a State convention is issued by the State central committee of the party, and a copy is sent to the ^{The call} chairman of each local committee. The call sets

forth the time and place of the convention, and the number of delegates to which each city, township, or county is entitled. Generally, representation of the different counties or municipalities is based (at least in part) upon the vote cast for the party candidates at the last State or national election; and thus the localities which cast a large party vote are rewarded by increased representation and influence in the State convention.

On the appointed day, the convention is called to order by the chairman of the State committee, who requests the ^{Organiza-} ^{secretary} of that committee to read the call. Pro-

^{ceedings} are then formally opened with prayer, after which motions are usually carried for the appointment by the chair of a committee on credentials, a committee on permanent organization, and a committee on resolutions. In some cases a temporary chairman and secretary are chosen, but frequently the chairman and secretary of the State committee serve as temporary officers until the report of the committee on permanent organization. The permanent officers of the convention include a president, secretary, assistant secretaries, sergeant-at-arms, and numerous vice-presidents. The president of the convention is generally a prominent party leader, and upon taking the chair he delivers a "keynote" speech upon the issues of the campaign.

Then follows the report of the committee on credentials, ^{Credentials} containing a statement of the number of delegates ^{and platform} present, and rendering a decision concerning contested seats. The platform is next read by the chairman

of the committee on resolutions, and is ordinarily accepted without amendment.

The convention then takes up its most important work — the nomination of candidates. The chair appoints a committee of tellers to take charge of the balloting, ~~naming the~~ whereupon nominations for the office of governor ~~candidates~~ are declared in order.¹ After the nominating speeches have been made, the balloting commences. When a candidate receives the number required for a choice, generally a majority of all votes cast, it is customary for one of the supporters of a defeated rival to move that his nomination be made unanimous. This motion commonly prevails, and the convention then proceeds with the nomination of candidates for other State offices. During the intervals between the ballots, short speeches are often made by prominent party leaders in response to an invitation from the chairman. Toward the close of the proceedings, all the nominees are sometimes escorted to the platform by a committee appointed for that purpose; and upon presentation by the chairman, each candidate in turn responds in a short speech.

State conventions ordinarily select the members of the State committee to serve until the next conven- ~~other~~ ^{other} tion, and in presidential years nominate the four ~~functions~~ delegates at large to the national convention.

551. Presidential Nominating Systems. Three methods of nominating candidates for the Presidency have prevailed in the United States: (1) by congressional caucus, or meeting of the party members of the two houses of Congress (1800–1824); (2) by State legislatures, acting either in an official capacity or as a legislative caucus (1824–1832); (3) by national nominating conventions, composed of delegates

¹ The entire proceedings of the convention up to this point, including the choice of permanent officers and of members of the several committees, are commonly prearranged by the State committee. The advantage of this prearrangement is that it materially shortens the time necessary for the preliminary work of the convention; its great disadvantage is that State committees sometimes abuse their power, and control not only the routine work of the convention, but the nominations as well.

chosen for the special purpose of nominating presidential candidates (1832 to the present time).

552. The Call of National Conventions. Each political party holds its national nominating convention in the ~~representa-~~ summer of the year in which the presidential election occurs. The call is issued by the national party committee, which body determines the time and place for the convention. The call specifies the number of delegates to which each State is entitled, and how they shall be elected. The Democratic party allows each State twice as many delegates as it has electoral votes, each territory being also represented. By a recent rule of the Republican party, each State is to be represented in the national convention by four delegates-at-large, one delegate for each congressional district, and an additional delegate for each congressional district which in 1914 cast not less than 7500 votes for the Republican candidate for Congress.

553. The Delegates. A copy of the official call is sent to each State party committee, whereupon that committee ~~selection~~ calls a State convention for the purpose of nominating the four delegates at large from each State. The State committee also notifies the local committees in the different congressional districts throughout the commonwealth, and these call congressional district conventions to choose the two delegates to which each district is entitled.¹ Delegates to both district and State conventions are chosen at local party primaries.

Long before the meeting of the convention, the names of various prominent men are suggested for the Presidency. ~~instruction~~ Friends of the leading candidates organize in each ~~of delegates~~ commonwealth, and endeavor to influence State and district conventions to instruct delegates in favor of the candidate of their choice. Estimates are given out from time to time of the comparative strength of the several

¹ This is the usual, but not the invariable method. In New York and several other commonwealths, the Democratic State convention chooses the entire State delegation.

candidates, and the contest for delegates continues until all have been chosen. As a rule it is impossible to foretell with certainty who will be the actual nominee of the convention, since many State delegations are unpledged, while others are instructed in favor of local candidates who are unlikely to receive general support. After all the delegates have been chosen, the convention city itself becomes the seat of war. The supporters of the leading candidates are early in the field, opening their headquarters in the prominent hotels; and they endeavor by all possible political devices to win the support of the delegates.

554. Procedure in National Conventions. It has become customary to hold the national conventions of the two great parties in immense auditoriums so as to accommodate ten or fifteen thousand spectators, ^{Auditoriums} in addition to nearly two thousand delegates and alternates. Local preparations are in charge of a committee of citizens of the convention city.

Toward noon on the day appointed in the official call, the convention is called to order by the chairman of the national committee. The proceedings are opened with prayer. The call is then read, after which the national committee reports a list of the temporary officers of the convention, consisting of a temporary chairman, secretary, clerks, sergeants-at-arms, and stenographers. This list is generally accepted by the convention without contest, whereupon the chairman of the national committee yields his place to the temporary chairman, who usually addresses the convention in a formal speech on the political situation.

A resolution is next adopted that the convention be governed by the rules of the preceding convention until otherwise ordered. Motions are made and carried for the appointment of a committee on credentials, one on permanent organization, one on rules, and a committee on resolutions, each consisting of one member

<sup>Temporary
organiza-
tion</sup>

<sup>Appoint-
ment of
committees</sup>

from each State and territory. Resolutions concerning contested seats are now presented to the convention, and referred without debate to the committee on credentials. The appointment of these committees ends the important business of the first session.

When the convention assembles for the second session, the first business in regular order is the report of the committee on credentials. In deciding cases of contested seats, the committee on credentials gives each side an opportunity to present its claims, and then decides between them — generally in favor of the regular delegates (that is, those indorsed by the State and district committees). In case of two full contesting delegations from the same State, seats are sometimes given to both sets, each delegate being entitled to one half a vote. After the credentials committee has arrived at a decision concerning contested seats, its report, including a list (arranged by States) of all delegates entitled to seats, is generally accepted by the convention with little debate.¹

The next business in order is the report of the committee on permanent organization, which consists of a list of the permanent officers of the convention, previously arranged to some extent by the national committee. This report is ordinarily adopted as a matter of course, and a committee is appointed to escort the permanent chairman to the platform. On taking the chair, the permanent chairman delivers a "keynote" speech on the issues of the approaching campaign.

The committee on rules then reports the order of business for the convention to follow, and its rules of procedure.

Two rules of great importance are peculiar to Democratic conventions. The first of these is the rule requiring for the nomination of candidates two thirds of the whole number of votes in the convention. The

¹ In some instances the committee's report is the occasion of vigorous discussion and an exciting contest, as at the Republican convention of 1890, whose debate upon contested seats occupies one hundred pages in the published proceedings.

second is the so-called unit rule under which a majority of each State delegation is allowed to cast the entire vote to which the State is entitled, even against the protest of a minority of the delegation.¹

While awaiting the report of the committee on resolutions, the convention disposes of miscellaneous business, such as the election of national committees and of the committees on notification. These committees ordinarily consist of one delegate from each State and territory, the members being designated by the respective delegations.

About the third day, the committee on resolutions is ready to report the platform. This is a formal statement of the party's attitude upon the public questions of the day, and next to the nomination of candidates is the most important part of the convention's work. The platform is usually adopted as read, although it sometimes occasions an exciting contest.

555. The Nomination of Candidates. Nominating proceedings are next in order, and these begin with the roll-call of States (arranged alphabetically) for the presentation of candidates for the presidential nomination. Eight or ten candidates are often nominated, since a State delegation frequently thus compliments some favorite son who has very little chance of securing general support. The delegation from any State when called in its turn may pass its right of nomination to any other delegation not yet called. Delegations which have no candidate of their own often second one of the nominations already made. The presentation of names affords the opportunity for long-continued applause, which supposedly indicates the popularity of the respective candidates.

After the roll-call for nominations is completed, the convention proceeds to the first ballot. As the name of each State is called by the convention secretary, the chairman

¹ The unit rule was abandoned by the Republican party in 1896.

of the delegation arises and announces the vote of his State.¹

Balloting Occasionally a candidate is nominated by acclamation, but often many ballots are necessary to decide the contest. If none of the chief candidates is successful on the first few ballots, it sometimes happens that a "dark horse" (a comparatively obscure man) finally receives the nomination.² As soon as any candidate receives the number of votes necessary for a choice, it is customary for the supporters of the next highest candidate to move that the nomination be made unanimous, this motion being adopted amid wild enthusiasm.

Nominating After the pandemonium has subsided — sometimes after a recess, the convention proceeds in the same manner to nominate a candidate for the Vice-Presidency.

A Vice-President This nomination seldom receives the careful consideration it deserves, and it is often given to a man in the hope that he may be able to carry a doubtful State, or in order to placate a faction in the party which has been opposed to the presidential nominee.

As soon as the candidates for President and Vice-President have been named, a motion is carried authorizing the **Final proceedings** national committee to fix the time and place of the next presidential convention. Provision is made for printing the proceedings, and resolutions of thanks are voted to the citizens of the city and to the various convention officers. The convention then adjourns *sine die*, and the campaign begins.³

556. Presidential Electors. Candidates for the two electors at large to which each State is entitled are nominated at the convention held for the nomination of State officers; or if there are no State officers to

¹ In Republican conventions, if a member of any delegation questions the vote as reported by the chairman, the roll of that delegation is called by the convention secretary.

² Notable instances are the nominations of Polk, Taylor, Pierce, Hayes, Garfield, and Benjamin Harrison.

³ After the convention has adjourned, the committee on notification visits the nominee at his home, and the chairman in a brief speech notifies him of the nomination. The candidate replies informally, accepting the honor, and later sends out a carefully written letter of acceptance, which is published and widely circulated as a campaign document.

be nominated, by a State convention called expressly for this purpose. Generally the candidate for elector in each congressional district is nominated at the congressional district convention; but in some commonwealths a complete electoral ticket for the entire State is nominated by the State convention. Distinguished members of the party who have never held national office are frequently nominated for the office of elector. As already pointed out, the presidential electors exercise no discretion in casting their votes, but simply register the choice of the national nominating convention.

557. Direct Primary System. The convention method of nominating candidates is now used in only one fourth of the States. Elsewhere it has been superseded by the "direct primary" system. This plan abolishes ^{Elimination of convention} the convention entirely by providing that voters at party primaries shall cast their ballots directly for their party's candidates — those individuals being nominated who receive a plurality of all votes cast. The great merit of this plan is that it eliminates the abuses of the convention system, especially machine control, and makes the party really responsible to its members.¹

At first used only for local offices, direct primaries have grown in favor until now, in addition to local candidates, State officers and federal Senators are often nominated in this manner. Complete state-wide systems ^{Prevalence of system} of direct nominations now prevail in thirty-eight States.

Twenty-one States have also adopted presidential-preference primary laws. These provide that delegates to the national party conventions shall be selected directly by the voters; and in some cases the voters are also permitted

¹ "The demand for the primary election has come from the feeling that the delegate convention has become corrupt; that the convention is manipulated by rings of professional politicians and office-holders; that 'deals' are made and delegates are bought and sold; that a mere handful of men determine the action of the convention, and that the rank and file of the party, who cannot make politics their business and who will not indulge in dis-honorable practices, cannot make their influence felt." — Woodburn, J. A., *Political Parties and Party Problems*, p. 283.

to express their preference directly for one of the candidates for the presidential nomination.

558. Nomination by Petition. Another method which likewise does away with the convention is that of nomination by petition, or by nomination papers. This plan is employed in Great Britain, and is a characteristic feature of the original form of the Australian system. In this country it has been used especially for the nomination of members of boards of education, and other non-partisan candidates. Under this plan, a candidate may be nominated by filing with the election officers a petition, signed by the requisite number of voters, who are usually required to pledge that they will support the candidate named in the petition. The great merit of nomination by petition is that it protects the independent voter who cannot participate in party nominations. Moreover, this method makes it possible to oppose objectionable nominees by placing before the voters deserving candidates independently nominated.

559. Elections. National elections are held on the first Tuesday after the first Monday in November. The **National** presidential election occurs every four years counting from 1900, while elections for Representatives are held biennially in even-numbered years. Shortly after the Civil War, acts were passed providing for a large degree of federal control of national elections. This legislation has since been repealed, so that at the present time the several commonwealths have entire charge of national, as well as of State and local elections.

In most commonwealths, the governor and other State officers are chosen on the first Tuesday after the first Monday in November of the even-numbered years, the **State** State election thus being held on the same day as the national election.¹ Economy of time, effort, and

¹ State elections are held on a different day from national elections in seven States, namely Arkansas, Georgia, Louisiana, Maine, Oregon, South Carolina, and Vermont.

money is secured by having the election of State and federal officers on a single day; but the drawback to this plan is that State issues are likely to be subordinated to national questions.

In several commonwealths an effort has been made to separate local from State and national elections by holding the local elections at a special time, usually in ^{Local} the spring or else biennially in the odd-numbered years. The object of this separation is to have local questions decided upon their merits apart from other issues.

560. Qualifications for Voting. Under our form of government, the regulation of the voting privilege is left entirely to the States, so long as they do not restrict ^{Regulation} _{by States} the right to vote on account of race, color, or previous condition of servitude.¹ In most commonwealths there are few restrictions upon the suffrage, the general rule being that all citizens may vote if they have attained the age of twenty-one, and have resided in the State for a period varying from six months to two years — one year being the common requirement. In a few commonwealths, even aliens are permitted to vote, providing they have declared their intention of becoming citizens.²

Criminals, the insane, paupers in institutions, and Indians not taxed are excluded from the suffrage in practically all of the States. In addition to these obviously necessary disqualifications, about twenty commonwealths have placed further restrictions upon the suffrage. Thirteen States,³ nearly all in the South or in New England, prescribe some form of educational test, either ability to read, or to read and write the English language. Several commonwealths, including Arkansas, South Carolina, Tennessee, and Virginia, require payment of a poll-

¹ Constitution, fifteenth amendment. Congress has of course power to regulate the suffrage in the territories and in the District of Columbia.

² Alabama, Arkansas, Indiana, Kansas, Michigan, Missouri, Nebraska, Oregon, South Dakota, Texas, and Wisconsin.

³ Alabama, California, Connecticut, Delaware, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, North Carolina, South Carolina, Washington, and Wyoming.

tax as a prerequisite to voting. In several Western States the suffrage is withheld from the Chinese or persons of the Mongolian race;¹ and in Idaho and Utah, from polygamists. As a general rule persons entitled to vote may also hold office, provided they are of a certain prescribed age, and have lived in the State the requisite period.

561. Woman Suffrage. Prior to 1919, about one third of the States permitted women to vote on equal terms with men. This reform had been brought about as the result of more than fifty years of effort on the part of the advocates of woman's suffrage. Finally, after a long struggle in Congress, that body voted in favor of the so-called Susan B. Anthony amendment to the federal constitution. This amendment — the nineteenth — grants the ballot to women everywhere on the same terms as to men. It was ratified by the requisite number of States in 1920.

562. Election Districts and Registration. Two preliminaries are necessary before elections are held — districting and registration. Districting means dividing the civil divisions (counties and townships) of the State into small election districts or precincts containing as nearly as possible an equal number of voters.

Each of these small subdivisions has a polling-place where voters are commonly required to register their names before the election, and where the ballots are cast on election day. The object of a preliminary registration is to identify individuals in communities where the residents are not personally known to one another; and to settle beforehand, if possible, any question as to a man's right to vote. Frequent registration is seldom required in rural districts where the voters are well acquainted with each other, while in the cities annual personal registration is generally necessary to prevent fraud. A voter registers by giving his name, place of residence, age, length of residence in the State, county, and election district, information con-

¹ Congress has also passed laws expressly excluding the Chinese from citizenship.



STATE ELECTION 1920

Tuesday, November 2

OFFICIAL BALLOT

CHATHAM

W^m M. Olin,
Secretary of the Commonwealth.

The Official Ballot for the State election in Massachusetts is printed on paper measuring, usually, about 14 by 10 inches. This is folded the long way, and has the date of the election, the name of the city or town, etc. (as above) printed on the first outside page. On the inside pages are arranged in columns the names and residences of the various candidates, with their party designations. For a facsimile of a portion of such a ballot, refer to the next page. In addition to the candidates shown, this particular ballot contained others for the following State offices: auditor, attorney-general, councilor, senator, representative; and for county commissioner, and county treasurer.

To vote for a Person, mark a Cross X in the Square at the right of the Party Name, or Political Designation.

GOVERNOR **Mark ONE.**

— — — of — — —	Republican
— — — of — — —	Prohibition
— — — of — — —	Socialist Labor
— — — of — — —	Democratic
— — — of — — —	Socialist

LIEUTENANT GOVERNOR **Mark ONE.**

— — — of — — —	Democratic
— — — of — — —	Republican
— — — of — — —	Socialist
— — — of — — —	Prohibition
— — — of — — —	Socialist Labor

SECRETARY **Mark ONE.**

— — — of — — —	Democratic
— — — of — — —	Socialist
— — — of — — —	Socialist Labor
— — — of — — —	Prohibition
— — — of — — —	Republican

TREASURER **Mark ONE.**

— — — of — — —	Democratic
— — — of — — —	Socialist
— — — of — — —	Socialist Labor
— — — of — — —	Prohibition
— — — of — — —	Republican

cerning his nativity, and other material facts serving to establish his identity. Registration is often in charge of a board on which the two chief parties are equally represented.

563. The Conduct of Elections. In addition to the registration of voters, a large amount of other preliminary work must be performed prior to election day. ^{Preliminary} Nominations must be duly certified to the officers ^{work} charged with the duty of printing the official ballots; polling-places must be designated and provided with ballots; and election officers appointed.

In the cities, general administration of the election laws is often in charge of an election board on which the two chief parties are equally represented; elsewhere ^{Holding the} ~~these~~ ^{selections} duties are entrusted to an election commis-
sioner, or to the county or township clerk. Each polling-
place is in charge of a certain number of inspectors or
judges, aided by clerks, whose duty it is to open and close
the polls, to permit only registered persons to vote, to re-
ceive and deposit the ballots, to count the votes, and to
certify the returns to the proper officials (the board of
elections or a similar authority). Each party is permitted
to have "watchers" at every polling-place, who witness
the casting and counting of the ballots, and challenge any
person whom they believe not qualified to vote.

Every precaution is taken to secure a free and honest expression of the will of the voters. In many ^{Election} ~~safeguards~~ States, electioneering is forbidden within a cer-
tain distance (often one hundred feet) of the polling-places;
watchers and challengers are permitted each party during
the casting and counting of ballots; election officers are
sworn not to attempt to influence any voter in casting
his ballot; precautions are taken against "repeating,"
and against "stuffing" the ballot-box; identification of his
ballot by any voter is prohibited;¹ candidates for office are

¹ In order to prevent him from selling his vote, and then distinguishing his ballot by tearing or marking it in such a way that the purchasers may know that he has kept his agreement.

sometimes required to file sworn statements of the amount expended by them or in their behalf for election purposes; and severe penalties are provided against bribery or intimidation of voters.

564. Casting and counting the Ballots. Throughout the Union, voting is by ballot, the polls being open during day-light, commonly from six A.M. to six P.M. All the ~~Australian~~ ^{system} States except two have adopted the Australian ballot in modified form.¹ This system provides for the exclusive use of an official ballot upon which the names of all candidates are printed (generally in parallel columns underneath the party names and emblems).² The voter receives one of these ballots from the election officials, and prepares it while alone in a little booth. He may vote a straight ticket by placing a cross-mark in the circle at the head of the party column, or a split or mixed ticket by placing a cross-mark opposite the name of each candidate for whom he wishes to vote. He then folds his ballot, and hands it to an election officer, who, in the presence of the other officers and of the voter, deposits it in the ballot-box.

As soon as the polls close, the ballots are counted, and the results certified to the proper county or city officers, ~~Election returns~~ who canvass the returns for the entire county or city, and issue certificates of election to the successful candidates. When State officers, presidential electors, or congressmen are voted for, the county authorities certify the result in their respective counties to State officers, who canvass the returns and issue the election certificates.

In most commonwealths a plurality only is necessary to an election; that is, a number of votes in excess of those

¹ In ten commonwealths voting machines are used to a limited extent.

² Another form known as the "Massachusetts" ballot is used in fourteen States. This omits the party emblem entirely, the names of the candidates being arranged in alphabetical order under the title of each office, followed by the name of the party, and the voter must have sufficient intelligence to read the ballot and select the candidates for whom he wishes to vote. Other States have a different plan, and print a separate ballot for each party or group of voters that has nominated candidates.

received by any other candidate. A few New England States require a majority of all votes cast, and where ~~one or~~ there are more than two candidates, this sometimes ~~plurality~~ necessitates a second election. For the adoption of constitutional amendments a majority of all votes cast at the election is generally required.

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QUESTIONS AND EXERCISES

1. Distinguish between an inhabitant, a citizen, and a voter.
2. Are all citizens voters? In your State must a voter be a citizen?
3. What are the qualifications for voters in your State? Are these determined by your State constitution, or by statute? What classes of individuals are expressly disqualified, and why?
4. What provisions of the federal constitution control the right of your State to determine the qualifications for voters?
5. Examine the report of the last census and ascertain the total number of citizens and the number of voters in your city or county. How many votes are usually cast in your city and county elections?
6. In the last State election how many votes were cast in your county for governor? What number of voters failed to exercise the right of

- suffrage? Should there be a property qualification for voters? An educational qualification?
7. Give the chief arguments for and against woman's suffrage.
 8. On an outline map of your State, mark with different colors the several election districts in which you live: the precinct, ward, county, State representative and senatorial districts, and the congressional district.
 9. Is registration required in your State? In all communities, or in cities of a certain size? What are the advantages of registration?
 10. Is the system of registration annual as in New York, or permanent as in Massachusetts? Describe the process of registration in your community.
 11. How is your local board of registration chosen? Of how many members composed?
 12. Give the time of holding local, State, and national elections in your commonwealth. What are the reasons for holding these at the same or different times?
 13. State the advantages and disadvantages of frequent elections.
 14. Which form of the Australian ballot is used in your State?
 15. Where is the polling-place in your precinct? How many votes were cast there at the last election? During what hours were the polls open?
 16. What body canvasses the vote in your city or county?
 17. In your State what candidates are nominated by conventions? By direct primaries? By petition? What are the advantages of each method?
 18. What are the functions of the local party primary in your community? What are the tests of party allegiance?
 19. Why is it important that party primaries be regulated by law?
 20. Describe the last State convention held by one of the political parties in your State, and compare its procedure with that described in Section 550.
 21. Prepare a report upon the national convention of each of the great political parties. (Reinsch, P. S., *Readings*, pp. 826-845.)
 22. Suggested readings on political rights and duties: Kaye, P. L., *Readings*, pp. 111-128.

APPENDIX A

THE CONSTITUTION OF THE UNITED STATES

PREAMBLE

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I. LEGISLATIVE DEPARTMENT

Section I. Congress in General

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section II. House of Representatives

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled

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to choose three, *Massachusetts* eight, *Rhode Island and Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

Section III. Senate

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section IV. Both Houses

1. The times, places, and manner of holding elections for Sena-

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tors and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section V. The Houses Separately

1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section VI. Privileges and Disabilities of Members

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section VII. Mode of Passing Laws

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section VIII. Powers granted to Congress

The Congress shall have power:

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts, and excises shall be uniform throughout the United States;
2. To borrow money on the credit of the United States;
3. To regulate commerce with foreign nations and among the several States, and with the Indian tribes;
4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
6. To provide for the punishment of counterfeiting the securities and current coin of the United States;
7. To establish post offices and post roads;
8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
9. To constitute tribunals inferior to the Supreme Court;

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10. To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;
11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
13. To provide and maintain a navy;
14. To make rules for the government and regulation of the land and naval forces;
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;
16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and
18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Section IX. Powers denied to the United States

1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.
2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.
3. No bill of attainder or *ex post facto* law shall be passed.
4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.
5. No tax or duty shall be laid on articles exported from any State.
6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

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7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section X. Powers denied to the States

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of the Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

ARTICLE II. EXECUTIVE DEPARTMENT

Section I. President and Vice-President

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. [The electors shall meet in their respective States and vote by

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ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]¹

4. The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

¹ Superseded by the twelfth amendment.

8. Before he enter on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the constitution of the United States."

Section II. Powers of the President

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section III. Duties of the President

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section IV. Impeachment

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and con-

viction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III. JUDICIAL DEPARTMENT

Section I. United States Courts

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section II. Jurisdiction of the United States Courts

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.¹

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section III. Treason

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

¹ This clause has been amended. See Amendments, Article XII.

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2. The Congress shall have power to declare the punishment of treason, but no attainer of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV. THE STATES AND THE FEDERAL GOVERNMENT

Section I. State Records

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section II. Privileges of Citizens, etc.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.¹

Section III. New States and Territories

1. New States may be admitted by the Congress into this Union: but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

Section IV. Guarantees to the States

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them

¹ This clause has been nullified by Amendment XIII, which abolishes slavery.

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against invasion, and on application of the legislature, or of the Executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V. POWER OF AMENDMENT

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of this constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI. PUBLIC DEBT, SUPREMACY OF THE CONSTITUTION, OATH OF OFFICE, RELIGIOUS TEST

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution as under the Confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers both of the United States and of the several States, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII. RATIFICATION OF THE CONSTITUTION

The ratification of the conventions of nine States shall be sufficient for the establishment of this constitution between the States so ratifying the same.

Done in convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, and of

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the Independence of the United States of America the twelfth.
In witness whereof, we have hereunto subscribed our names.

George Washington, President, and Deputy from **VIRGINIA**.

NEW HAMPSHIRE — John Langdon, Nicholas Gilman.

MASSACHUSETTS — Nathaniel Gorham, Rufus King.

CONNECTICUT — William Samuel Johnson, Roger Sherman.

NEW YORK — Alexander Hamilton.

NEW JERSEY — William Livingston, David Brearley, William Paterson, Jonathan Dayton.

PENNSYLVANIA — Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.

DELAWARE — George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom.

MARYLAND — James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll.

VIRGINIA — John Blair, James Madison, Jr.

NORTH CAROLINA — William Blount, Richard Dobbs Spaight, Hugh Williamson.

SOUTH CAROLINA — John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.

GEORGIA — William Few, Abraham Baldwin.

Attest: William Jackson, Secretary.

AMENDMENTS¹

ARTICLE I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

¹ The first ten amendments were proposed by Congress, September 25, 1789, and declared in force December 15, 1791.

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

APPENDIX**ARTICLE X**

The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

ARTICLE XI¹

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII²

1. The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a

¹ Proposed by Congress March 5, 1794, and declared in force January 8, 1799.

² Proposed by Congress December 19, 1803, and declared in force September 25, 1804.

majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII¹

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV²

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support

¹ Proposed by Congress February 1, 1865, and declared in force December 18, 1865.

² Proposed by Congress June 19, 1864, and declared in force July 28, 1868.

the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV¹

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI²

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE XVII³

1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

2. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

3. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

¹ Proposed by Congress February 28, 1869, and declared in force March 30, 1870.

² Proposed by Congress July 12, 1909, and declared in force February 25, 1913.

³ Proposed by Congress June 12, 1912, and declared in force, April 8, 1913.

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ARTICLE XVIII¹

SECT. 1. After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territories subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SECT. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

ARTICLE XIX²

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power by appropriate legislation to enforce the provisions of this article.

APPENDIX B

AREA AND POPULATION OF TERRITORIES AND INSULAR POSSESSIONS

TERRITORY	Date of Acquisition	Date of Organization	Area Square Miles	Population, 1920
Alaska	1867	1868	590,884	54,899
District of Columbia		1791	70	437,571
Guam	1899		310	13,375
Hawaii	1898	1900	6,449	255,011
Panama Canal Zone	1904		436	22,858
Philippine Islands	1899	1902	115,026	10,350,640
Porto Rico	1899	1900	3,495	1,290,809
Territory Group, Samoa	1900		77	8,056
Virgin Islands	1917		150	26,051
Total			716,737	22,460,072

¹ Proposed by Congress December 19, 1917, and declared by the Department of State on January 29, 1919, to be in force on and after January 16, 1920.

² Proposed by Congress June 4, 1919, and declared in force August 26, 1920.

APPENDIX

APPENDIX C

AREA, POPULATION, AND ELECTORAL VOTES
OF THE STATES

STATE	Area Squares Miles (Hectares)	Area Squares Miles	POPULATION		Electoral Votes (1932)
			1910	1930	
Alabama	1818	51,968	2,138,003	3,348,174	12
Arizona	1912	113,036	204,354	334,162	3
Arkansas	1836	51,335	1,574,440	2,752,264	9
California	1850	158,297	2,377,549	3,426,561	13
Colorado	1875	103,948	799,074	939,629	6
Connecticut	1768	4,905	1,124,756	1,380,632	7
Delaware	1787	2,370	202,322	223,003	3
Florida	2845	58,666	759,610	968,470	6
Georgia	1788	59,265	2,600,121	3,895,632	14
Idaho	1800	83,288	325,594	431,866	4
Illinois	1818	90,665	5,638,501	6,485,280	29
Indiana	1816	36,354	2,700,876	3,930,390	15
Iowa	1846	56,147	2,224,771	2,404,021	13
Kansas	1861	52,158	1,600,040	1,769,357	10
Kentucky	1791	40,598	2,289,005	2,416,630	13
Louisiana	1812	48,906	1,650,588	1,798,509	10
Maine	1820	33,040	742,371	768,014	6
Maryland	1788	12,337	1,295,346	1,419,661	3
Massachusetts	1788	8,266	3,366,416	3,852,356	18
Michigan	1837	57,080	2,810,173	3,665,432	15
Minnesota	1858	64,682	2,075,708	2,387,125	12
Mississippi	1817	40,865	1,797,114	1,790,618	10
Missouri	1821	69,420	3,293,335	3,404,055	15
Montana	1889	140,097	1370,053	548,859	4
Nebraska	1867	77,520	1,102,214	1,300,372	6
Nevada	1864	210,690	81,875	77,407	3
New Hampshire	1788	9,341	430,572	443,063	4
New Jersey	1787	8,224	2,537,167	3,155,000	14
New Mexico	1912	121,634	327,301	360,350	3
New York	1788	49,204	9,113,614	10,385,327	45
North Carolina	1780	52,426	2,206,287	2,559,123	12
North Dakota	1869	70,837	577,056	646,872	5
Ohio	1802	41,040	4,767,131	5,750,394	24
Oklahoma	2007	70,057	1,637,155	2,020,283	10
Oregon	1850	96,690	672,705	783,389	5
Pennsylvania	1787	45,126	7,665,511	8,750,017	38
Rhode Island	1790	1,243	542,610	624,367	5
South Carolina	1788	30,909	1,515,400	1,683,724	9
South Dakota	1889	77,615	583,888	636,547	5
Tennessee	1795	43,022	3,184,789	2,337,885	12
Texas	1845	265,896	3,806,542	4,663,228	20
Utah	1894	84,090	373,351	440,396	4
Vermont	1791	9,564	355,056	357,428	4
Virginia	1788	43,637	2,001,621	2,300,187	13
Washington	1829	69,127	1,141,000	1,356,621	7
West Virginia	1863	24,170	1,221,119	1,463,701	8
Wisconsin	1848	56,066	2,333,860	2,633,067	13
Wyoming	1890	97,914	245,065	304,402	3
Total		3,086,719	93,641,197	105,273,040	531

APPENDIX D**ILLUSTRATIVE MATERIAL FOR THE STUDY OF GOVERNMENT****PART I. LOCAL GOVERNMENTS. CHAPTERS I-VI**

1. A map of the pupil's State, showing the counties.
2. An enlarged map of the pupil's county, showing its subdivisions.
3. Reports of county and town or township officers.
4. Ballots used at county elections.
5. A collection of legal notices from the local papers.
6. Copies of the more common legal blanks (deeds, mortgages, etc.).
7. Town-warrants, tax-bills, and other town documents.
8. The State constitution and revised statutes.
9. The manual of the State legislature.
10. The city charter and ordinances.
11. A copy of the city manual for each pupil.
12. A map of the city showing ward lines and election precincts.
13. The city council calendar.
14. Copies of measures introduced into the council, and of ordinances published in the daily papers.
15. Reports of the several municipal departments and officers.
16. A declaration of taxable property and a tax-bill.
17. Copies of tally-sheets used at elections.
18. Copies of nomination petitions, if used.
19. Copies of the ballots used at municipal, State, and national elections.
20. A copy of the jury list.
21. A set of the forms used in civil and criminal actions.

PART II. STATE GOVERNMENTS. CHAPTERS VII-XVII

1. Copies of the constitution and revised statutes of the pupil's own State.
2. A collection of the constitutions of all the States. The most recent and complete is F. N. Thorpe's *The Federal and State Constitutions, Colonial Charters, and other Organic Laws* (1909).
3. A good text-book on the government of the pupil's own State, such as the *Handbooks of American Government*, edited by L. B. Evans.
4. The manual of the State legislature.
5. A volume of the laws made during a legislative session.
6. A volume of the reports of the Supreme Court.
7. A map of the pupil's State, showing the representative and senatorial election districts.
8. Copies of the ballots used at State and national elections.
9. Copies of bills which have been introduced into the legislature.
10. Copies of the calendar and the journal of each house of the legislature.

APPENDIX

PART III. THE NATIONAL GOVERNMENT.
CHAPTERS XVIII-XXXVII

1. A large political map of the United States, showing territorial acquisitions.
2. A good physiographic map of the United States.
3. Abstract of the Thirteenth Census, and the statistical atlas of the Thirteenth Census.
4. The Statistical Abstract of the United States.
5. The United States Revised Statutes.
6. Copies of the House Manual and the Senate Manual.
7. Latest copy of the Congressional Directory.
8. The Congressional Record.
9. Reports of the federal departments and bureaus, especially those of the Civil Service Commission, the Interstate Commerce Commission, the Commissioner of Education, the Commissioner of Immigration, the Monthly Summary of Commerce and Finance, the Year-Book of the Department of Agriculture, the Consular Reports, and the Labor Bulletins.
10. The Executive Register, published by the Government Printing Office.
11. Thorpe's *The Federal and State Constitutions*. This contains also the early charters and plans of Union.

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